NF-87 #96

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 249.

JOHN F. WOLLENSAK, APPELLANT,

vs.

FRANK A. REIHER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED AUGUST 2, 1882.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of the United States circuit court for the seventh circuit, and the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, judges of said circuit court, on Tuesday, the twenty-fifth day of April, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-two, and our Independence the one hundred and sixth year.

WILLIAM H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

JOHN F. WOLLENSAK
vs.
FRANK A. REIHER. } In Chancery.

2 Be it remembered that on the twenty-seventh day of September, A. D. 1880, came John F. Wollensak, complainant, by his solicitor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bill of complaint in said entitled cause, which said bill is in the words and figures following, to wit:

3 *Bill of Complaint.*

Circuit Court of the United States for the Northern District of Illinois.

JOHN F. WOLLENSAK, Complainant,
vs.
FRANK A. REIHER, Defendant. } In Equity.

To the honorable the judges of the circuit court of the United States for the district of Illinois:

John F. Wollensak, a citizen of the State of Illinois and of the United States, and residing at Chicago, in said State, brings this his bill of complaint against Frank A. Reiher, a citizen of the State of Illinois and of the United States, and residing at Chicago, in said State, and thereupon your orator complains and says:

That heretofore and before the 11th day of March, A. D. 1873, he was the true, original, and first inventor of certain new and useful improvements in transom lifters and locks, as fully described in the letters patent hereinafter mentioned, and which had not been known or used before his said invention, and which was not at the time of his application for a patent, as hereinafter mentioned, in public use or on sale with his consent or allowance.

And your orator further shows unto your honors that being so as aforesaid the first inventor and discoverer of said improvement, and being also a citizen of the United States, did, on March 11, 1873, upon due application therefor, obtain letters patent of the United States for said invention in due form of law, under the seal of the Patent

Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid, and numbered 136,801, whereby there were granted and secured to your orator, his heirs or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvements, as set forth in said letters patent, which are of record in the Patent Office of the United States, and by virtue whereof he became exclusively the sole owner and holder of all the rights and privileges granted and secured, or intended to be granted and secured, in and by the said letters patent.

4 And your orator further shows unto your honors, that your orator, having for good and lawful cause, surrendered said letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, did, on the twentieth day of July, 1880, obtain new letters patent, being for the same invention, for the residue of said term, and which were marked reissue No. 9307, and were issued in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and bearing date the day and year aforesaid, as by the said last-mentioned letters patent or a duly authenticated copy thereof here in court to be produced, will more fully and at large appear.

And your orator further shows unto your honors, that by virtue of the premises, your orator became and now is the sole and exclusive owner of said reissued letters patent, reissue No. 9307, and the inventions and improvements described therein, and of all the rights and privileges granted and secured or intended to be granted and secured thereby. And that since he became the owner thereof as aforesaid he has invested and expended large sums of money, and has been to great trouble in and about said invention, and for the purpose of carrying on the business of manufacturing and selling said transom lifters and locks, and making the same profitable to himself and useful to the public; that said invention has been and is of great benefit and advantage; that he has made and sold large numbers of transom lifters and locks on the plan of said patented invention, and is now and has at all times been able and willing to meet and supply all the demands of the public therefor; that the public have derived great advantages therefrom, and have generally acknowledged and acquiesced in the aforesaid rights of your orator; and your orator believes that he will realize and receive large gains and profits therefrom, if infringements by said defendant and his confederates shall be prevented.

And your orator further shows unto your honors that he is entitled to all the damages occasioned by the infringement of the said reissued letters patent No. 9307, and all the gains, profits, and advantages accruing to unauthorized persons from their infringement of said reissued letters patent by the manufacture, use, or sale of tran-

som lifters containing and embodying the said invention or any substantial or material part thereof; and that he is by law entitled to sue for and recover the same to his own use.

Yet the said defendant, well knowing the premises and the rights secured to your orator aforesaid, but contriving to wrong and injure your orator and to deprive him of the benefits and advantages which might, and otherwise would, accrue unto your orator from said invention, and after the issuing of the letters patent as aforesaid, and before the commencement of this suit, did, as your orator is informed and believes, without the license or allowance and against the will of your orator, and in violation of his rights, and in infringements of the aforesaid letters patent, reissue No. 9307, unlawfully and wrongfully, and in defiance of the rights of your orator, make, construct, use, and vend to others to be used, the said invention, and did make, construct, use, and vend to others to be used, transom lifters made according to and employing and containing said invention, and that said defendant still continues so to do; and that said defendant is threatening to make the aforesaid transom lifters in large quantities, and to supply the market therewith, and to sell the same, and still continues so to do, and is threatening to sell the aforesaid transom lifters in large numbers, and to supply the market therewith, all in defiance of the rights acquired by and secured to your orator as aforesaid, and to his great and irreparable loss and injury, and by which he has been and still is being deprived of great gains and profits, which he might and otherwise would have obtained, but which have been received and enjoyed, and are being received and enjoyed, by the said defendant by and through his aforesaid unlawful acts and doings.

And your orator further shows unto your honors, on information and belief, that said defendant has made and sold large quantities of said transom lifters, and now has a large quantity on hand which he is offering for sale and has made and realized large profits and advantages therefrom; but to what extent, and how much exactly your orator does not know, and prays a discovery thereof. And your orator says that the use of said invention by said defendant, and his preparation for and avowed determination to continue the same, and his other aforesaid unlawful acts, in disregard and defiance of the rights of your orator have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

And your orator further shows unto your honors that he has caused notice to be given to said defendant of said infringements, and of the rights of your orator in the premises, and requested him to desist and refrain therefrom; but said defendant has disregarded said notice, and refused to desist from said infringements, and still continues to make and sell said transom lifters, in violation of your orator's rights as aforesaid. All which actings and doings of the said defendant are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can have no adequate relief, except in this court, to the end, therefore, that

the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may make a full disclosure and discovery of all the matters aforesaid, and upon his corporal oath, according to the best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises, and to all the several matters hereinbefore stated and charged, as fully and particularly as if severally and separately
6 interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by him acquired, and the damages suffered by your orator from the aforesaid unlawful acts.

And your orator prays that said defendant, Frank A. Reiher, his servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined provisionally and perpetually by the order and injunction of this honorable court from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said invention, or any part thereof, of any transom lifters made in accordance therewith, or like or similar to those which he has heretofore made or sold; and that the said defendant may be decreed to pay the costs of this suit; and that your orator may have such further relief, or such other relief, as to this honorable court shall seem meet and as shall be agreeable to equity.

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendant, Frank A. Reiher, and his servants, agents, attorneys, and workmen, and each and every of them, as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendant, Frank A. Reiher, commanding him by a certain day, and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree as may be made against him.

And your orator will ever pray, &c.

JOHN F. WOLLENSAK.

E. A. ELLSWORTH,
Cincinnati, Ohio, Counsel.

UNITED STATES OF AMERICA, }
Northern District of Illionis, } ss:

On this 27th day of September, 1880, before me personally appeared John F. Wollensak, the above-named complainant, who being by me duly sworn deposes and says that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as

to matters therein stated on information and belief, and as to those matters he believes it to be true.

[SEAL.] H. S. STODDARD,
U. S. Com'r.

(Endorsed:) Filed Sep. 27, 1880. W. H. Bradley, clerk.

7 On the same day, to wit, on the twenty-seventh day of September, A. D. 1880, a writ of subpœna issued out of said clerk's office in said entitled cause, which said writ, together with the notice for a motion for a writ of injunction endorsed thereon, and the return of the marshal thereto attached, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

The United States of America to Frank A. Reiher, Greeting:

We command you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of November next, to answer the bill of complaint of John F. Wollensak, this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against by default.

8 To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 27th day of September, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the 105th.

[SEAL.] W. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against him as confessed, and a decree entered accordingly.

W. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Circuit Court of the United States of America. July Term, A. D. 1880.

JOHN F. WOLLENSAK }
vs. } In Chancery.
FRANK A. REIHER. }

9 To FRANK A. REIHER:

Take notice that the complainant will move this honorable court

on the 4th day of October, A. D. 1880, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above-named defendant in accordance with the prayer of the bill herein.

Yours, etc.,

E. A. ELLSWORTH,
Comp't's Solicitor.

Dated this 27 day of September, A. D. 1880.

Special Deputy's Return.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Know all men by these presents that I have appointed, and by these presents do appoint George N. Jones my true and lawful deputy to execute the annexed writ John Wollensak *vs.* Frank A. Reiher, and to make return of the execution thereof according to law.

JESSE S. HILDRUP, [SEAL.]
U. S. Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit, by delivering a true copy thereof to Frank A. Reiher, therein
10 named, on the 27th day of September, A. D. 1880.

JESSE S. HILDRUP,
United States Marshal,
By GEO. N. JONES,
Special Deputy.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

George N. Jones, being duly sworn, deposes and says: That he served the annexed writ as stated in the foregoing return, and that the expense returned by him in addition to the fees was actually incurrred, and that the same is according to law.

GEO. N. JONES.

Subscribed and sworn to before me, this 27th day of Sept., A. D. 1880.

[SEAL.]

PHILIP A. HOYNE,
U. S. Com. N. D. Ills.

(Endorsed:) Filed Oct. 8, 1880. Wm. H. Bradley, clerk.

11 Afterwards, to wit, on the eighteenth day of October, A. D. 1880, came the defendant, by his solicitor, and filed in said clerk's office his answer to the bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

Circuit Court of the United States for the Northern District of Illinois. In Equity.

JOHN F. WOLLENSAK *vs.* FRANK A. REIHER.

The answer of Frank A. Reiher, defendant, to the bill of complaint of John Wollensak, complainant.

This defendant now, and at all times hereafter, saving and reserving to himself all and all manner of benefit, of advantage, of exceptions which may be had or taken to the many errors and insufficiences in the complainant's bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is material or necessary for him to make answer unto, he answers and says:

That he denies that the said John F. Wollensak, before the 11th day of March, 1873, was the true, original, and first inventor of certain new and useful improvements in transom lifters and locks, which had not been known and used by others before that time, and which had not been in public use before that time, as alleged in said bill.

And this defendant, further answering, says: That whether the said complainant did make due application for a patent, or did, on the 11th day of March, 1873, obtain letters patent of the United States for said alleged invention as set forth in said bill, he has no knowledge except from hearsay, and as he is informed in said complainant's bill, and so leaves the said complainant to prove the same as best he may.

And this defendant denies upon information and belief that by virtue of said alleged patent issued to the said John F. Wollensak on the 11th day of March, A. D. 1873, as mentioned in said bill of complaint, he, the said John F. Wollensak, became or ever was possessed of or vested with any exclusive right to make, use, and sell, in the United States or elsewhere, the alleged invention patented by said letters patent.

And the said defendant says that he is informed, and believes it to be true, that the specifications in said letters patent mentioned, so alleged to have been issued to the said John F. Wollensak, as
12 set forth in the specifications as annexed in said letters patent, are incomplete and ambiguous, and do not set forth in what the said improvement consists, and in definite and specific terms, and does not set forth what it is an improvement upon.

And this defendant says that the said letters patent so alleged to have been issued to the said John F. Wollensak, and the matters and things therein set forth and claimed, do not contain such a claim as is patentable, or can be patented under and by virtue of the laws of the United States.

And this defendant, further answering, says that the said alleged invention had been in public use for more than four years prior to the date of the said complainant's patent (to wit, on the 11th day of

March, 1873). That the same had been used and sold in the principal hardware stores in the city of Boston, State of Massachusetts; in the city of New York, in the State of New York, and in all the larger cities of the United States, for more than four years prior to the date of said patent.

And this defendant, further answering, says that he does not know, and is not informed, save by the complainant's bill, whether or not the said John F. Wollensak surrendered said letters patent above mentioned, as mentioned in said bill and made a new application for letters patent, and that a new patent was issued to him on the 20th day of July, 1880, and being for the same invention, which reissue was No. 9307; nor whether the said John F. Wollensak made proper application therefor, and in all things complied with the laws in such case made and provided.

And this defendant, further answering, says that he does not know or has he any knowledge of what the said complainant has done in or about expending any money in the manufacture of said alleged patent.

That this defendant says that he denies that the said patent of the said complainant is of any benefit or advantage to the public, or that they have derived any advantage therefrom, either as to the original or reissued patent.

And this defendant, further answering, says that he has not at any time infringed any patent belonging to the said complainant as alleged in his said bill, nor has he at any time used or manufactured the same, sold or in any way or manner dealt in the same, either as to any goods made in violation of the original patent dated March 11, 1873, or the reissued patent dated July 20, 1880.

And this defendant, further answering, denies that he has threatened to make, made, or intended to make, use, or vend, any article or thing made or constructed in accordance with or under the said original or reissued patent, nor has he at any time threatened to supply the market with any article or thing made or constructed under said patents, or either of them.

13 And this defendant denies that the said complainant has been deprived of any gains or profits by reason of this defendant in any way, shape, or manner infringing any rights which the said complainant has in and to his alleged patent.

And this defendant denies that he has made a large quantity or any quantity of transom lifters as alleged by said complainant, under his said patent or reissues, or that he has now or ever has had any of the same on hand for use, sale, or otherwise, nor has he at any time offered any for sale, nor realized any profits on the same.

And this defendant says that in the said alleged reissue No. 9307, procured by the said John F. Wollensak, several matters and things therein claimed are new and distinct from the said matters and things set forth, claimed, and patented in the said original patent No. 136,801.

And this defendant, further answering, says that on the 6th day of April, 1880, he obtained from the United States a patent, No. 226,352, on transom lifters and locks, which he now has and owns,

and ready to be produced on the hearing of this suit, but which patent is entirely different from that claimed to have been patented by the said complainant and mentioned in his said bill of complaint.

That all each and every transom lifter made or sold by him has been made in accordance with and precisely like in every respect the said patent, mentioned in his said letters patent, issued to him as aforesaid.

And this defendant, further answering, says that he is informed and believes, and alleges it to be true, that the said invention and discovery so claimed by the said complainant in his bill was in fact invented and discovered by, and the same principle was known to and had been previously combined by another, to wit, one G. R. Wheeldon, who resides in the city of Chicago, Cook county, Illinois; and that the said complainant, learning of said discovery by the said Wheeldon, surreptitiously and unjustly obtained his said patent, claiming the same as his own invention, when he well knew the same was the invention of the said Wheeldon.

And this defendant says that the said transom lifter, so made and constructed by him under said patent, and the only ones made by him, is very different in kind from those made by the said complainant, under the patent mentioned in this said bill, and that he has not and does not infringe the said complainant's patent in making his.

And this defendant, further answering, denies that he has ever contrived to injure the said complainant, or to cheat and defraud him of any profits and benefits as is alleged in said bill.

14 And this defendant denies all and all manner of unlawful combination and confederacy wherewith he stands charged, without this that there is any other matter or thing in the said complainant's said bill contained, material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, traversed, confessed, and avoided, or denied, is not true to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and prays hence to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

FRANK A. REIHER.

ELDRIDGE & TOURTELLOTTE,
Defendant's Solicitors.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

Frank A. Reiher, being duly sworn, doth depose and say: That he is the defendant in the above answer, signed and subscribed by him, and that the matters and things therein set forth are true of his own knowledge, except as to such matters as are stated upon information, and as to those he believes it to be true.

FRANK A. REIHER.

Subscribed and sworn to before me, this eighteenth day of October, 1880.

[SEAL.] H. S. STODDARD,
U. S. Com'r.

(Endorsed:) Filed Oct. 18, 1880. W. H. Bradley, cl'k.

15 Afterwards, to wit, on the twenty-first day of October, in the adjourned October term of said court, A. D. 1880, in the record of the proceedings thereof in said entitled cause, before the Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

JOHN F. WOLLENSAK
vs.
FRANK A. REIHER. } In Chancery.

Upon the reading and filing of notice of motion for preliminary injunction and proof of service thereof, with the affidavits of the complainant annexed thereto, and of the bill filed by the complainant, and on reading and filing the answer and affidavits on behalf of the defendant, and counsel for the respective parties having been heard, and the same having been duly considered by the court, it is hereby ordered, as herinafter stated, that said injunction be issued, unless the defendant shall, within ten days, file a bond in the sum of one thousand dollars, with security to be approved by the court, payable to the complainant, and conditioned that the de-
16 fendant will well and truly abide the judgment of this court upon the final hearing of the cause, and pay to the complainant all damages which he may suffer, and all damages and profits which may be awarded him by the court by reason of the manufacture, use, or sale of transom lifters, in violation of the alleged exclusive rights of the complainant, secured to him by the letters patent described in the bill of complaint; and until the final hearing of the cause the defendant shall make and keep a full and true account of each and all transom lifters made or sold by him from the date of the filling of the bill of complaint herein, and shall make report thereof to the court, under oath, whenever required by the order of the court; and in case of the failure of the said defendant, within the time heretofore designated, to give the security heretofore required, the said injunction shall issue, as hereby ordered, upon the plaintiff's giving bond in the penal sum of one thousand dollars, with security to be approved by the court, conditioned that the plaintiff will pay all costs and damages which may be sustained by the defendant by the issuing of the injunction
17 herein in case the same is dissolved by the court.

And afterwards, to wit, on the twenty-third day of October, A. D. 1880, there was filed in said clerk's office a bond in said entitled cause, which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents, that we, Frank Reiher and Michael Levi, of the city of Chicago, in the county of Cook, and State of Illinois, are held and firmly bound unto John F. Wollensak, of the same place, in the penal sum of one thousand dollars lawful money of the United States, to be paid to the said John F. Wollensak, his heirs and assigns, to which payment, well and truly to be made, we bind ourselves, our, and each of our, heirs, executors, and administrators, jointly and firmly by these presents.

Sealed with our seals. Dated the 23rd day of October, A. D. 1880.

Whereas the above-named John F. Wollensak has commenced an action against the above-named and bounden Fra-k A. Reiher, in the circuit court of the United States for the northern district
18 of Illinois, for an alleged infringement of the reissue patent No. 9307, for transom lifters; and whereas the said court has issued and entered an order in said suit that unless the said Frank A. Reiher should file a bond in said suit in the penal sum of one thousand dollars, with conditions mentioned in said order, an injunction should issue in said suit on the said complainant in said suit, filing a bond in said suit for a like penalty:

Now, therefore, the conditions of the above obligation are such, that if the said Frank A. Reiher shall well and truly abide the judgment of the said court upon the final hearing of the said cause, and pay to the complainant all damages which he may suffer, and profits which may be awarded him by the said court by reason of the manufacture, use, or sale of transom lifters in violation of the rights of said complainant, John F. Wollensak, as secured to him by the said letters patent mentioned in said bill of complaint, then this obligation to be null and void; otherwise to be in full force and effect.

FRANK A. REIHER. [SEAL.]
MICHAEL LEVI. [SEAL.]

19 (Endorsed:) Approved. Surety examined before me, Oct. 23, 1880. Thomas Drummond. Filed Oct. 23, 1880. W. H. Bradley, cl'k.

Afterwards, to wit, on the third day of November, A. D. 1880, came the complainant, by his solicitor, and filed in said clerk's office his replication to the answer of the defendant in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

In the United States Circuit Court for the Northern District of Illinois. In Equity.

JOHN F. WOLLENSAK, Complainant,
vs.
FRANK A. REIHER, Defendant.

The replication of John F. Wollensak, complainant, to the answer of Frank A. Reiher, defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiences of
20 the said answer, for replication thereunto says: That he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

E. A. ELLSWORTH,
Solicitor and Counsel for Complainant.

(Endorsed:) Filed Nov. 3, 1880. W. H. Bradley, cl'k.

21 Afterwards, to wit, on the twenty-ninth day of November, in the adjourned October term of said court, A. D. 1880, in the record of the proceedings thereof in said entitled cause before the Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

JOHN F. WALLENSAK
vs.
FRANK A. REIHER. } In Chancery.

On motion of E. A. Ellsworth, Esq., solicitor for the said complainant, it is ordered that the said cause be referred to E. B. Sherman, one of the masters of this court, to take the evidence therein, and to report the same to the court.

22 Afterwards, to wit, on the second day of March, A. D. 1881, in the December term of said court, A. D. 1880, in the record of the proceedings thereof in said entitled cause before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

JOHN F. WOLLENSAK
vs.
FRANK A. REIHER. } In Chancery.

It being represented to the court that E. A. Ellsworth, Esq., counsel for complainant, has died since the commencement of the above cause, it is ordered, on motion of complainant, that the appearance of Banning & Banning be entered in said cause as solicitors for complainant.

It is further ordered that the defendant close his proofs in this cause within sixty days.

Afterwards, to wit, on the ninth day of July, in the July term of said court, A. D. 1881, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

23

JOHN F. WOLLENSAK
vs.
FRANK A. REIHER. } In Chancery.

On motion, and as per stipulation of the parties, leave is given defendant to file an amendment to his answer herein *nunc pro tunc* as of the twenty-eighth day of November, A. D. 1880. The replication of complainant to the original answer to stand to said amended answer herein.

On the same day, to wit, on the ninth day of July, A. D. 1881, came the defendant, by his solicitors, and filed in said clerk's office his amended answer in said entitled cause, which said amended answer is in the words and figures following, to wit:

Amended Answer.

Circuit Court of the United States for the Northern District of Illinois.

JOHN F. WOLLENSAK
vs.
FRANK A. REIHER. } In Equity.

24 Amendments to the answer of defendant heretofore filed herein.

At the end of the 6th line, on the 7th page of answer, insert the following:

And this defendant, further answering, says: That he is informed and believes it to be true, that the said invention and discovery, and the same principle and combination (or substantial and material parts thereof), patented in and by the reissued letters patent, mentioned in the bill of complaint aforesaid, was patented on the 7th day of July, 1868, by letters patent No. 79541, granted and issued to

G. W. R. Bayley and John McCluskey, who resided at Algiers, Orleans parish, in the State of Louisiana, and prior to the supposed invention and discovery thereof by John F. Wollensak, the patentee.

F. A. REIHER.

ELDRIDGE & TOURTELLOTTE,
Def't's Sol'rs.

It is hereby stipulated that the above amendment may be filed *nunc pro tunce* as of Nov. 28th, 1880, & that the replication to the original answer may stand as the replication to the answer as amended.

ELDRIDGE & TOURTELLOTTE,
Sol's for Def't.
BANNING & BANNING,
Compl'ts Sol'rs.

(Endorsed:) Filed July 9, 1881, as of Nov. 28, 1880. Wm. H. Bradley, cl'k.

25 Afterwards, to wit, on the twenty-fifth day of April, in the adjourned March term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Decree.

JOHN F. WOLLENSAK
vs.
FRANK A. REIHER. } In Chancery.

This cause having been heretofore argued by the counsel of the respective parties, and considered by the court, and the court being now sufficiently advised, doth order, adjudge, and decree that the bill herein be dismissed for want of equity, and that the defendant recover of the plaintiff his costs herein, to be taxed at ——— dollars and ——— cents, and that he have execution therefor.

26 Afterwards, to wit, on the twenty-seventh day of June, in the adjourned May term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

JOHN F. WOLLENSAK
vs.
FRANK A. REIHER. } In Chancery.

And now at this day appeared the plaintiff, and prayed an appeal to the Supreme Court of the United States from the decree rendered in this court on the twenty-fifth day of April last, which is allowed upon his giving bond according to law.

On the same day, to wit, on the twenty-seventh day of June, A. D. 1882, there was filed in said clerk's office an appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States, Northern District of Illinois.

27 JOHN F. WOLLENSAK } vs. FRANK A. REIHER. } In Equity.

Know all men by these presents that we, John F. Wollensak and Ephraim Banning, both of Chicago, Illinois, are held and firmly bound unto Frank A. Reiher, of the same place, in the penal sum of three hundred dollars ($300.00), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally firmly by these presents.

The condition of the above obligation is such that, whereas, on the 25th day of April, A. D. 1882, a final decree was entered in the above-entitled cause dismissing the bill of complaint therein and against said John F. Wollensak for costs, from which decree the said John F. Wollensak has taken an appeal to the Supreme Court of the United States:

Now, therefor-, if the said John F. Wollensak shall duly prosecute his said appeal with effect, and shall pay all damages
28 and costs that may be awarded against him in case the said decree shall be affirmed in said Supreme Court, then the above obligation to be void; otherwise to remain in full force and effect.

In witness whereof, we have hereunto set our hands and seals, this 12th day of May, 1882.

JOHN F. WOLLENSAK. [SEAL.]
EPHRAIM BANNING. [SEAL.]

(Endorsed:) Approved June 27, 1882. Thomas Drummond. Filed June 27, 1882. Wm. H. Bradley, clerk.

29 On the hearing of said cause the following testimony was taken and allowed by the court, and made of record, which said testimony is in the words and figures following, to wit:

Certificate of Evidence.

Circuit Court of the United States, Northern District of Illinois.

JOHN F. WOLLENSAK } vs. FRANK A. REIHER. } In Equity.

I, Thomas Drummond, judge of the circuit court of the United States for the northern district of Illinois, hereby certify that at the

hearing of the above-entitled cause the complainant read and used in evidence the depositions of Smith M. Randolph, John Addison, John Middleton, W. L. B. Jenney, E. S. Jenison, John J. Sherman, Mathew B. Sweezey, Theodore V. Wadskier, Otis L. Wheelock, R. L. North, Oswald Locket, Frederick Bauman, A. Lucas Hunt, George E. Bliss, G. S. Standart, B. F. Homer, Richard Pennington,
30 James M. Horton, Amos Grannis, William S. Bates (two depositions), John F. Wollensak, John Wollensak, Samuel Salzer, Paulena Wollensak, and Davis J. Crocker, and the patents and exhibits therein mentioned and offered in evidence, and that at such hearing the defendant read and used in evidence the depositions of C. W. Crary, Frederick Burkhart, Horatio Thomas, Charles Whittingham, and Melville E. Dayton, and the patents and exhibits therein mentioned and offered in evidence, and that such depositions and exhibits as read and used by the parties respectively are as follows:

31 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

JOHN F. WOLLENSAK *vs.* FRANK A. REIHER.

Testimony in behalf of complainant and defendant, taken pursuant to an order of reference in said cause, before Elijah B. Sherman, a master in chancery of said court, commencing on the 2d day of December, 1880, and continuing from time to time as hereinafter noted.

Present: E. A. Ellsworth, solicitor for complainant, and Messrs. Eldridge and Tourtellote, solicitors for defendant.

Mr. Ellsworth, counsel for complainant, here offers in evidence reissued letters patents granted to John F. Wollensak for improvements in transom lifters, dated July 20th, 1880, reissue number 9307, and requests the master to mark the same "Wollensak's Exhibit Patent."

SMITH M. RANDOLPH, being first duly sworn, testified as follows:

Q. What is your name, age, residence, and occupation?
32 A. My name is Smith M. Randolph; I reside at 275 West Van Buren St., and I am by occupation an architect.

Q. How long have you been engaged in the profession of an architect?

A. For 20 years; I was in the army 3 years, and am now 43, so that I have been at it most of my life.

Q. Are you acquainted with John S. Wollensak, the complainant in this case?

A. Yes.

Q. How long have you known him?

A. Since 1871; I have known him about 8 or 9 years.

Q. Do you know whether or not he is a dealer in what are known as transom lifters?

A. He is a dealer in hardware specialties—specialties of that kind.

Q. Do you know what these transom lifters are, as to construction and operation?

A. I have used them in my business seven or eight years.

Q. Prior to the time you began to use them, seven or eight years ago, what transom lifters were in the market?

A. I never saw any.

Q. Then the first transom lifter you ever saw was Wollensak's; it was the first one you ever saw?

A. It is the only one I have ever seen.

Q. State whether or not Wollensak first called your attention to it.

A. I am inclined to think that one of his agents came to my office with drawings or a model of it; I can't say how I first became acquainted with it, but I think it was first brought to the office, as such things are usually brought to the attention of architects.

Q. State whether or not, after your attention was called to it, you adopted it and used it.

A. I did.

Q. Will you state whether or not it possesses any special merit; and, if so, what?

A. I think it is an article of great merit; I don't know how we could get along very well without it; I have seen no other transom lifter except the cord or something of that kind; no lifter and lock combined.

33 Q. Will you state, judging from your experience in the matter, whether or not, in your opinion, Wollensak was the creator of the art of operating transoms by devices of this character?

(Objected to.)

A. So far as I know he is the only individual that ever suggested such a thing to me.

Q. Please look at the patent marked "Wollensak's Exhibit Patent," and state whether or not the transom lifter therein shown and described is the transom lifter about which you have testified.

A. That is the description of the article we have been using.

Cross-examination:

Q. How long did you say you had been in business?

A. I have practiced the profession of an architect about 20 years.

Q. Where?

A. Here and in St. Louis.

Q. How long here?

A. Since 1871.

Q. Who are you with?

A. I am in business for myself.

Q. Where is your business?

A. In the United States Express Building; been there four years; 87 Washington street.

Q. When did you first use this Wollensak patent lifter?

A. In 1871 or '72; I came here in the fall of 1871.

Q. Had you ever seen any kind of transom lifter prior to this one?
A. Nothing of this character.
Q. Well, of any kind?
A. Nothing except a cord, or something of that kind.
Q. Had you ever seen anything except one constructed with a cord?
A. No.
Q. You had been engaged in the business of an architect for twenty years?
A. Yes, except three years when I was in the army.
Q. You have been in the business of a practical architect all that time?
A. Yes.
Q. Where?
A. In St. Louis, from 1865 to 1871, and here since 1871.
34 Q. And never saw any kind of a transom lifter before this?
A. Nothing, except a cord, or something of that kind, which I made myself; nothing specially put up for that purpose.
Q. You mean you have never seen anything put up as a specialty?
A. No.

Re-examination:

Q. Please describe the appliances you referred to in your last answers.
A. It was any way to get the transom up; it was usually a cord and pulley.
Q. That is all that you now have any recollection of?
A. That is all.

Recross-examination:

Q. You knew of nothing except a cord and pulley?
A. No.
Q. And you never saw anything else?
A. No.

Stipulation.—It is hereby stipulated that the signatures of the witnesses to the depositions in this case are waived in this case on both sides.

Q. By Mr. TOURTELLOTE: Prior to the last ten years was there much attention paid to the matter of ventilation in the construction of houses?
A. There was not.
Q. Within how many years has that matter been specially looked after?
A. It has only been within the last ten years. It is not properly looked after yet.

JOHN ADDISON, being first duly sworn, testified as follows:

Mr. ELLSWORTH:

Q. Please state your name, age, place of residence, and occupation.

A. John Addison; age, 33; residence, Chicago; occupation, architect.

Q. How long have you been a resident of Chicago?

A. Since 1872.

35 Q. How long have you been engaged in the profession of an architect?

A. Well, do you mean myself, practicing?

Q. Practicing.

A. I have been in Chicago since 1872.

Q. Are you acquainted with John F. Wollensak, the complainant in this cause?

A. Yes, sir.

Q. How long have you known him?

A. Since 1872.

Q. Do you know anything about the Wollensak transom lifter?

A. Yes, sir.

Q. Please look at the patent marked "Wollensak's Exhibit Patent," and state what it represents.

A. It represents what I understand by the Wollensak patent transom lifter.

Q. When did you first have any knowledge of this transom lifter?

A. Some time in 1873.

Q. Have you or not used this transom lifter or recommended its use?

A. I have used it very frequently.

Q. You may state whether or not it possesses any utility or value, so far as application to a transom is concerned?

A. It is very valuable and very ornamental.

Q. Prior to the time at which you state you first knew of this transom lifter, were there or not any transom lifters in use, to your knowledge?

A. Not that I know of. I never saw any.

Q. Who first called your attention to this transom lifter of Mr. Wollensak's?

A. I think Mr. Wollensak himself. I think I went into his store to buy some hardware and he showed it to me.

Q. State whether or not, in your opinion, or as a matter of fact, it supplies a want which was felt in the matter of building and architect's work.

A. I think it filled the same opening that a door does; that is, that a transom is no good without the transom lifter any more than a door opening without a door.

Q. Was there, as a matter of fact, a necessity for the use of such a thing as this transom lifter?

36 A. Well, I think it made the transom. I think the transom was no good without the transom lifter. That is what I mean to say.

Cross-examination.

Mr. TOURTELLOTTE:

Q. I understand you to say—how long have transoms been in use?

Q. Had you ever seen any kind of transom lifter prior to this one?
A. Nothing of this character.
Q. Well, of any kind?
A. Nothing except a cord, or something of that kind.
Q. Had you ever seen anything except one constructed with a cord?
A. No.
Q. You had been engaged in the business of an architect for twenty years?
A. Yes, except three years when I was in the army.
Q. You have been in the business of a practical architect all that time?
A. Yes.
Q. Where?
A. In St. Louis, from 1865 to 1871, and here since 1871.
34 Q. And never saw any kind of a transom lifter before this?
A. Nothing, except a cord, or something of that kind, which I made myself; nothing specially put up for that purpose.
Q. You mean you have never seen anything put up as a specialty?
A. No.

Re-examination:

Q. Please describe the appliances you referred to in your last answers.
A. It was any way to get the transom up; it was usually a cord and pulley.
Q. That is all that you now have any recollection of?
A. That is all.

Recross-examination:

Q. You knew of nothing except a cord and pulley?
A. No.
Q. And you never saw anything else?
A. No.

Stipulation.—It is hereby stipulated that the signatures of the witnesses to the depositions in this case are waived in this case on both sides.

Q. By Mr. TOURTELLOTE: Prior to the last ten years was there much attention paid to the matter of ventilation in the construction of houses?
A. There was not.
Q. Within how many years has that matter been specially looked after?
A. It has only been within the last ten years. It is not properly looked after yet.

JOHN ADDISON, being first duly sworn, testified as follows:

Mr. ELLSWORTH:

Q. Please state your name, age, place of residence, and occupation.

A. John Addison; age, 33; residence, Chicago; occupation, architect.

Q. How long have you been a resident of Chicago?

A. Since 1872.

35 Q. How long have you been engaged in the profession of an architect?

A. Well, do you mean myself, practicing?

Q. Practicing.

A. I have been in Chicago since 1872.

Q. Are you acquainted with John F. Wollensak, the complainant in this cause?

A. Yes, sir.

Q. How long have you known him?

A. Since 1872.

Q. Do you know anything about the Wollensak transom lifter?

A. Yes, sir.

Q. Please look at the patent marked "Wollensak's Exhibit Patent," and state what it represents.

A. It represents what I understand by the Wollensak patent transom lifter.

Q. When did you first have any knowledge of this transom lifter?

A. Some time in 1873.

Q. Have you or not used this transom lifter or recommended its use?

A. I have used it very frequently.

Q. You may state whether or not it possesses any utility or value, so far as application to a transom is concerned?

A. It is very valuable and very ornamental.

Q. Prior to the time at which you state you first knew of this transom lifter, were there or not any transom lifters in use, to your knowledge?

A. Not that I know of. I never saw any.

Q. Who first called your attention to this transom lifter of Mr. Wollensak's?

A. I think Mr. Wollensak himself. I think I went into his store to buy some hardware and he showed it to me.

Q. State whether or not, in your opinion, or as a matter of fact, it supplies a want which was felt in the matter of building and architect's work.

A. I think it filled the same opening that a door does; that is, that a transom is no good without the transom lifter any more than a door opening without a door.

Q. Was there, as a matter of fact, a necessity for the use of such a thing as this transom lifter?

36 A. Well, I think it made the transom. I think the transom was no good without the transom lifter. That is what I mean to say.

Cross-examination.

Mr. TOURTELLOTTE:

Q. I understand you to say—how long have transoms been in use?

A. How long? Well, I knew of them some time in 1873.
Q. That was the first you ever heard of any transoms?
A. I never saw a transom until I came to Chicago.
Q. When did you come to Chicago?
A. In 1872.
Q. The first time you had ever seen a transom?
A. I think that is so—I might qualify that, if you will allow me, by saying I saw transoms over front doors, but not interior transoms. Transoms were used over front entrance doors.
Q. But you never saw transoms over interior doors before you came to Chicago, in 1872?
A. I think not.
Q. You saw this shortly after you came here?
A. Yes, sir.
Q. Where?
A. In Wollensak's store.
Q. Was it the same as you find here; was it the same as in this exhibit now shown you—this exhibit now before you called "Wollensak's Exhibit Patent" in this testimony?
A. I think it was.
Q. It is exactly the same?
A. Yes, sir.
Mr. ELLSWORTH: Was there or not any objection to the use of transoms prior to the time of the existence of this transom lifter?
A. I think there was no necessity; the transom was no good without the transom lifter.

JOHN MIDDLETON, being first duly sworn, testified as follows:

Mr. ELLSWORTH:

Q. Please state your name, age, place of residence, and occupation.
A. John Middleton; age, 58, am a master carpenter, office, 241 Dearborn st.; reside in the city of Highland Park.
37 Q. How long have you been engaged in your present business?
A. About 22 years in Chicago.
Q. State whether or not in the course of your business in Chicago, you have had occasion to make and apply transom windows?
A. I have.
Q. Prior to 1873, can you tell whether or not a transom lifter was known in the market?
A. Not a transom lifter proper, but cords and pulleys were used.
Q. How were transoms held open or closed prior to that time other than by pulleys and cords?
A. Usually with a catch which was made for the purpose to hold it down and with a cord and pulley to open it, and sometimes a button as we term it, a wooden button to hold it open to any degree that we wished.
Q. This wooden button was a sort of prop, do you mean?
A. That is what it amounted to; it used to screw down to the jamb and work to any degree that we wanted it.

Q. From what point was it worked? I mean, could you stand upon the floor of the room to work it?

A. Very seldom; used from a chair usually.

Q. You had to climb up to it, then?

A. Yes, sir.

Q. Are you acquainted with John F. Wollensak, the complainant in this case?

A. I am.

Q. How long have you known him?

A. I have been personally acquainted with Mr. Wollensak about three years.

Q. Do you know anything about the use of the Wollensak transom lifter?

A. I do.

Q. Please state what you know about it?

A. I have used the Wollensak transom lifter in the neighborhood of six years, between six and seven years I should judge. I fix the time from the fact that I know I never used any before the great fire; it came to my knowledge since that; always known it as the Wollensak lifter; it is specified so in architects' specifications, and were called for several years before I knew Mr. Wollensak personally.

38 Q. You say they are or were specified as Wollensak's transom lifters in the specifications of architects?

(Objected to, as leading.)

A. They have been.

Q. Are they now, to your knowledge?

A. They are.

Q. Please state whether or not the Wollensak transom lifter possesses any practical value?

A. It does. It is the best lifter I have ever seen, and the best, I think, in use.

Q. Look at the patent marked "Wollensak's Exhibit Patent," and state if you have read and understand the same?

A. I have read the patent issued from the Patent Office, and I understand it to be the same as I first used and have always used.

Q. State whether or not the patent represents, describes, and claims the Wollensak transom lifter, about which you have been testifying?

A. It does.

Q. Look at the model marked "Complainant's Exhibit Wollensak Transom," and state what it represents, if you know.

A. It represents the Wollensak lifter and the operation of lifting from three different points, as I have always used it since I became acquainted with the lifter.

Counsel for complainant here offers the model in evidence and requests the examiner to mark it "Complainant's Exhibit Wollensak Transom."

Q. You say you are familiar with the construction and operation of this Wollensak transom lifter. Will you now look at the transom

lifter now handed you, and state whether or not you find therein any similarity to the Wollensak lifter?

(Objected to.)

A. Do I find a similarity?

Q. Yes.

A. Yes, I do.

Q. Please state what it is.

A. This is the first time I ever saw it, but it looks to be about the same thing, except this ratchet to hold the rod which is used instead of a thumb screw.

39 Q. Do you find there a guide for the upper end of the lifting rod?

A. Yes.

Counsel for complainant here offers in evidence the model referred to, and requests the examiner to mark the same "Exhibit Reiher Lifter."

Cross-examination waived.

W. L. B. JENNEY, being first duly sworn, testified as follows:

Q. What is your name, age, and occupation?

A. My age is 48; occupation, an architect; and I reside in Chicago.

Q. How long have you been in business as a practical architect?

A. I graduated in one of the schools of architecture and engineering in Paris in 1856, and have been in constant practice of architecture and engineering since then, and was an engineer in the army 5 years. I have been practicing in Chicago for the last 13 years.

Q. State whether you are acquainted with John F. Wollensak, the complainant in this case.

A. I am.

Q. How long have you known him?

A. Principally since 1871; had some slight acquaintance before that.

Q. Are you familiar with the construction and operation of the transom lifter made and sold by him called the Wollensak transom lifter?

A. I am.

Q. When did you first have a knowledge of it?

[A.] It was after the Chicago fire.

Q. How was your attention called to it?

A. It was presented to the architects' offices by models or full-sized specimens. I think that was the way that it was brought to my attention.

Q. By whom?

A. I do not remember who it was. It was some one that came there that was connected with Mr. Wollensak. I was informed where I could get it.

Q. It was first represented as the Wollensak transom?

(Objected to.)

A. Yes.

40 Q. Please state whether it possesses any practical utility or advantage in its use.

A. It does. It enables the transoms over doors that are extensively used in offices and buildings to be opened and shut, and secured open at any point, or fastened at any point, and shut with but very little difficulty. It can be maneuvered by a person on the floor. It is very simple in its operation, and does not get out of order. As for myself, I have used it in every building I have constructed since it was presented to me.

Q. State whether or not it filled a recognized want in the art.

A. It did; before that time we had used the ordinary spring catches which we could operate by a rod and a hook on the end of it. There was no means of fastening them except at a fixed point, while Wollensak's can be opened more or less at pleasure. His is less liable to break the transom, especially where there are heavy transoms.

Q. This prior contrivance that you refer to, was it anything more than a hook and staple?

A. It was the ordinary spring catches which you buy in the hardware stores; it would fasten and shut the transom. We had a hook on the end of a rod, and would pull the catch down, and at the same time open the transom. But there was difficulty, more or less, and liability to break the transom.

Q. The hook you refer to, was that connected with the transom?

A. No; it was connected with a rod, which we use in pulling open and shut windows.

Q. It was a mere pole that was placed anywhere in a building or room?

A. Yes.

Q. Please look at the patent marked "Wollensak's Exhibit Patent," and state what it represents, if you know.

A. It represents this transom of which I have spoken.

Q. The Wollensak transom?

A. Yes.

Q. Please look at the model marked "Complainant's Exhibit Wollensak Transom," and state what it represents.

41 A. It represents the same transom of which I was speaking.

Q. Please look at exhibit marked "Exhibit Reiher Transom," and state whether or not you understand its construction and mode of operation.

A. I do.

Q. State whether or not you find any similarity between it and the Wollensak transom lifter.

A. In regard to its operation in opening and shutting the transom, it is substantially the same, with, however, some variations in the method of construction; the method of holding it in place when open or shut is different.

Q. State whether or not you find in this Reiher transom lifter the combination with the transom, its lifting arm, and operating

rod, of a guide at the upper end of the operating rod to prevent its being bent or displaced by the weight of the transom.

A. I do.

Q. As a matter of fact or preference in your practice, which of these two transom lifters is, in your judgment, the best?

(Objected to.)

A. If equally well constructed I see but little choice. The specimen here before me is not nicely made; not as much so as I have seen in Wollensak's.

Q. This specimen you refer to is the Reiher lifter?

A. Yes; it is not as well constructed.

Cross-examination:

Q. When you say that the opening and closing of the transom is the same, you mean its operation is the same?

A. I mean the arrangements. (Witness referring to the model.)

Q. They operate the same?

A. Yes.

Q. Please give me the points of similarity.

A. I will.

Q. Do you mean that the operation of the two transom lifters is the same?

A. I mean the operation of the lever here is the same; they both are held in place, or rather have guides for holding the operating rod in place; the guide in the Wollensak lifter is an open
42 guide, and in the Reiher lifter it is a continuous guide, but both serve the same purpose.

Q. The opening and closing of the transom is the same?

A. Yes.

Q. Is that all the points of similarity in them?

A. They are both operated by a person standing on the floor.

Q. Do you know where the point of bearing is in the Wollensak patent, and where the weight of the sash connects with, or is applied by, the long arm?

(Objected to, as ambiguous and indefinite.)

A. It varies in the three methods of hanging the transom; the model you have here is three transoms; one hung at the bottom, one at the top, and one at the middle. (Witness here referred to "Exhibit Wollensak Transom.")

Q. I refer to the one that is hung at the top; is or not the bearing at the point of juncture of the lifting rod with operating rod?

A. Yes.

Q. At this point? (Pointing to the Complainant's Exhibit Wollensak Model.)

A. Yes.

Q. It that movable or stationary?

A. Stationary, with regard to the operating rod.

Q. Is it fixed or stationary, with regard to its position on the transom?

A. It is fixed on the rod.
Q. The point of bearing moves with the rod, doesn't it?
A. Yes.
Q. It moves with the rod in the Reiher patent?
A. Yes.
Q. Is it always at the point where the lifting arm hits the casing?
A. I don't understand that question; the lifting rod don't hit the casing.
Q. Is it not always at the foot of the lifting arm?
A. It is.
Q. It is in the Reiher patent?
A. Yes; in both.
Q. Is the point of bearing at the foot of the lifting arm in the Wollensak patent?
A. Yes; it may be transferred to other points.
43 Q. Your business has been that of an architect?
A. Yes.
Q. For how long?
A. Since 1856. Part of the time I have been engaged in engineering.
Q. How much of the time have you been engaged in engineering?
A. Five years in the army.
Q. What kind of engineering?
A. Military engineering during the war; part of my business is landscape engineering.
Q. Is this the only kind of engineering you have been engaged in?
A. Except what belongs to architecture; part of the construction of buildings is engineering. I am not a mechanical engineer.
Q. You have had no practice in mechanical engineering?
A. No.
Q. You have never been engaged in that?
A. No.
Q. When did you first see the Wollensak lifters exhibited here and shown to you by the exhibits in evidence?
A. Not until the rebuilding of Chicago after the fire in '71 or the winter of '72.
Q. Do you mean in January or December, 1872?
A. It was during the rebuilding of Chicago after the fire.
Q. It is after the fire even up to to-day. I want to know about what time after the fire?
A. We commenced to rebuild in the winter of 1872, I must have seen it in the winter of 1872. It was soon after the first buildings were put up directly after the Chicago fire.
Q. Was it in January, 1872?
A. I can't fix the month; it was during the winter 1872–'3. I used it in the Portland Block, and also in the Fletcher & Sharp Building in Indianapolis.
Q. Was it constructed in the same manner and made as you see it now in this exhibit?
A. Substantially; I think I see some slight changes in the method

of construction, but it is substantially the same, probably there
44 are some little variations at this point (witness referring to the hinges of exhibit.)

Q. Are you positive that the lifting rod extended beyond or above the juncture of the lifting arm at that time?

A. To the best of my remembrance it did.

Q. Did this rod extend above this point (referring to a point on the operating rod of exhibit)?

A. This is the way it is most familiar to me, whether I have seen it made in any other way I don't know.

Q. Have you ever seen any other transom lifter?

A. None except Wollensak's until I saw this one (witness here refers to Reiher exhibit).

Q. Did you ever see any appliances used for the purpose of raising and lowering transoms before this one?

A. Nothing in the way of transom lifters, or that resemble this.

Q. Well, of any kind.

A. They were only makeshifts, as I have described, and never called transom lifters.

Q. They were never put on the building before that time?

A. No. Sometimes there was used cords and pulleys.

Q. Did you ever see any appliance with simply this lifting arm connected with the casing to support the transom?

A. No.

Q. Were transoms used extensively before the fire?

A. No.

Q. Were they raised or lowered by any sort of contrivance?

A. As I have said we sometimes used cords and pulleys when we could not reach the transom from a chair. There is one in use in green-houses made by Hitchings of New York; it is somewhat like this, but works with cogs and wheels. I never saw that until recently and some time after the Wollensak transom had been used.

Q. When did you first see the Reiher patent transom lifter?

A. I never saw it until to-day.

Q. You have made no examination of it before?

45 A. I had no knowledge of it until a few minutes ago.

Q. Never examined it before?

A. No.

Q. You stated, if I understood you rightly, that the transom lifter you first saw was substantially like the one shown you, Complainant's Exhibit Wollensak Transom?

A. Yes.

Q. Now, if the one you first saw and the ones which you have referred to, if that operating rod didn't extend above the point of juncture with the lifting arm, was that substantially like the one shown you in this exhibit, Complainant's Wollensak Patent Transom?

A. I should think it would be substantially like this, only this one (referring to the Wollensak Exhibit Model) is the best one I would say. The upper guide shown in the model increased the steadiness

of the movement; that is all. It makes it more steady, but the operation would be identical; the operation is the same.

Q. Does the upper guide in the Wollensak patent perform any other office than to make it more steady in its operations?

A. I should say it did not.

Re-examination:

Q. Does the upper guide in a full-sized transom lifter prevent the operating rod from binding or cramping in the lower guide when such a rod supports the weight of the transom?

A. To some extent, particularly if the transom is a very heavy one and the operating rod a light one.

Q. When the transom is hung at its lower edge, what would be its effect in opening and closing, upon the operating rod, providing the upper end of the latter was unprovided with a guide of some kind?

A. It would cause the operating rod to spring or bend if the transom was a heavy one.

Q. Would it not then be practically inoperative?

A. Such a condition might occur.

E. S. JENISON, being first duly sworn, testified as follows:

Q. Please state your name, age, residence, and occupation.

46 A. E. S. Jenison; age, 33; residence, Chicago; occupation, architect.

Q. How long have you been engaged in the profession of an architect?

A. Since 1868.

Q. You have been the architect of many buildings in the city of Chicago and elsewhere?

A. Yes, sir.

Q. Are you acquainted with John F. Wollensak, the complainant in this case?

A. Yes, sir.

Q. How long have you known him?

A. Well, I was trying to remember whether I ever met him personally—I am not positive that I did before 1876.

Q. Please look at the model marked "Complainant's Exhibit Wollensak Transom," and state what it represents, if you know.

A. It represents the Wollensak lifter, as we know it; the Wollensak transom lifter.

Q. When did you first know of that transom lifter?

A. We have in our possession a letter that would give that date; it was some time in 1873 or 1874 I should say (witness referring to the letter); February, 1874; some time in 1873 is the first time I remember seeing this.

Q. It is known generally as the Wollensak transom lifter among architects and builders?

A. Well, I only know for myself; I always specified it as such, and get goods under that specification.

Q. You use it, then, considerably in your specifications for building?

A. I have hardly ever built without using it in some shape since I have known of it.

Q. Do you or not regard it as of considerable value and utility?

A. That is evidenced by the fact that we have used it; as I say, I do not recollect of a building in which we have not used it in some shape since I have known it.

Q. Do you know whether or not there was any transom lifter used prior to this transom lifter of Wollensak?

A. I do not recall anything, except a rope with a pulley.

Q. This is the first transom lifter, then, that has ever been
47 introduced to the market, so far as you know?

A. Yes, sir.

No cross-examination.

JOHN J. SHERMAN, being first duly sworn, testified as follows:

Q. What is your name, age, residence, and occupation?

A. John J. Sherman; age, 44; residence, 68 West Madison street, Chicago; occupation, carpenter and joiner.

Q. How long have you been engaged in that business?

A. Since 1872; that is, I have carried on business since 1862, and I commenced at it in 1852.

Q. Have you, in the course of your business, applied transom lifters to transom windows?

A. Yes, sir.

Q. When did you first commence to do this?

A. I think it was in 1873 I used the first one.

Q. What did you use then?

A. Used this Wollensak lifter.

Q. Who did you buy them of?

A. I always bought them of Mr. Wollensak.

Q. Look at the model marked "Complainant's Exhibit Wollensak Transom," and state whether or not you find the Wollensak lifter therein.

A. Yes, sir; that is the Wollensak lifter.

Q. That is the kind you first commenced to use?

A. Yes; I think it has been that way all the time.

Q. What value do they possess?

A. I think they possess great value in opening and operating transoms.

Q. Before that time what did you use for opening and closing transoms?

A. Well, the only thing that we used then was pulley and cord.

Q. You have used this pretty extensively?

A. Yes, I have put up quite a number.

Q. Looking again at the model, will you state, as a practical builder, the functions that are performed by the guide for the upper end of the lifting rod?

A. Well, the guide is to steady the rod to hold it in its place.

48 Q. Without using it what would be the effect?
A. The operating rod would bend and twist.
Q. Would it then become practically inoperative?
A. It would not operate.
Q. Why would it not operate?
A. Because the rod would get out of place.
Q. Have these transom lifters of Wollensak's come to be known as a general article of trade in hardware stores?
A. Yes, they are found, I guess, in all hardware stores.
Q. Have come to be recognized as a standard article?
A. Yes, sir.

Cross-examination:

Q. You don't know what other transom lifters may have been used without your knowledge, here and elsewhere?
A. I know only what has been used in Chicago.

MATTHEW B. SWEEZEY, being first duly sworn, testified as follows:

Q. Please state your name, age, residence, and occupation.
A. Matthew B. Sweezy; age, 56; residence, 3148 Vernon avenue; occupation, builder and carpenter.
Q. How long have you been engaged in the business of building and carpentry?
A. Well, about 30 years; all my life, as long as I can remember.
Q. How long have you been in business in Chicago?
A. Since 1872, the spring of '72.
Q. In the course of your business, do you have occasion to apply transom lifters to the transom windows over doors in buildings?
A. Yes, sir.
Q. What transom lifters have you applied?
A. I have never applied any other than Wollensak's.
Q. When did you first know of Wollensak's transom lifter?
A. I think it was in 1874 that I first heard of it.
Q. How did you happen to see it?
A. A party I was at work for said he had seen something
49 of the kind somewhere, and if I would go to a certain hotel—I forget the name of it now—the proprietor of the hotel would show one to me; he had one in his hotel; so I went there—I forget where it was—and he told me where he got it; so I went to Wollensak's and got one, and ever since that time I have been using it.
Q. The Wollensak transom lifter was the same one that was at the hotel?
A. The same one; it had his name on it; the man said he didn't know where it came from, but I found his name on it, so I knew where to find it; I didn't know him previously.
Q. State whether or not the transom lifter shown in the Exhibit Wollensak Transom is the Wollensak lifter you have referred to.
A. Yes, sir; he has got three different arrangements of the transom; I have used them all—all three; sometimes hung from the top,

sometimes from the centre, and sometimes from the bottom, as they are here.

Q. The same as in the model?

A. The same as in the model.

Q. State whether or not this Wollensak transom lifter has any value or utility in its use.

A. It is very valuable and very useful, both.

Q. Prior to your knowledge of this Wollensak transom lifter, what other transom lifters, if any, do you know of before then?

A. I never knew of any other before this, except to operate them with cord and pulley; used to do that quite often; they were out of reach; had a cord and pulley, so we had to hoist up to reach it on a chair or something.

Q. That is all you know of?

A. There was another operation attached to a little rod that had holes in it, to hitch like that to shove it out or draw it back, the same as is used in church ventilating sash; the long drop they call it.

Q. Do you mean that this rod was attached at one end to the swinging end of the transom window, and passed through the window opening, to connect with the transom bar in some way?

A. Yes, sir; it is an old device; been used a great many years; that is a very plain thing.

Q. How could you reach it when applied to a transom from a chair?

A. Had to get upon a chair or something to reach it.

Cross-examination waived.

THEODORE V. WADSKIER, being first duly sworn, testified as follows:

Q. Please state your name, age, residence, and occupation.

A. Theodore B. Wadskier; age, 50; residence, 3011 Michigan avenue; am an architect.

Q. How long have you been a practical architect?

A. Well, I have been in the business since 1850; that is, I have been engaged in the architectural business since that time; I have been in business for myself 27 or 28 years. I have been here since 1857—March, 1857.

Q. You are familiar then with the various appliances used in building for the operation of doors, transoms, windows, etc.?

A. Well, I only know of one kind.

Q. What kind is that?

A. That is Wollensak's transom lifter.

Q. When did you first know of Wollensak's transom lifter?

A. I think it was in 1873; might have been 1874.

Q. How was it first brought to your attention?

A. Well, I think the first time I saw it was in some building.

Q. Are you acquainted with Wollensak, the complainant?

A. Yes, sir.

Q. How long have you known him?

A. Well, I think I have known him personally about—between two and three years; about three years.

Q. Please look at the model marked "Exhibit Wollensak Transom," and state what it represents.

A. Well, there are three different transoms—three transoms hung in three different ways; one at the top, one in the centre, and one at the bottom.

51 Q. What transom lifter is shown on that model?

A. This is Wollensak's.

Q. That is the one you have testified about, is it?

A. Yes, sir.

Q. Does that transom lifter, Wollensak's transom lifter, I mean, possess any value as a matter of convenience or utility?

A. Yes; I think it has very great value.

Q. Do you or not specify the use of the Wollensak transom lifter in your specifications?

A. Well, I have always done so from the fact that I have never used any other.

Q. Do you know whether or not this transom lifter of Wollensak's is extensively used?

A. I think it is, sir; very extensively.

Q. Prior to the time of the introduction of this Wollensak transom lifter into the market, what means, if any, were used for operating transoms?

A. Well, I never saw any means except getting up on a chair and putting a block of wood in the transom or something of that kind, a stick of wood or something.

No cross-examination.

OTIS L. WHEELOCK, being first duly sworn, testified as follows:

Q. Please state your name, age, residence, and occupation.

A. Otis L. Wheelock; age, 64; residence, 1250 Wabash Ave.; occupation, architect.

Q. Are you engaged in practicing your profession in Chicago?

A. Yes, sir.

Q. Are you alone?

A. The firm is Wheelock & Clay.

Q. How long have you been engaged in that business?

A. I have been in Chicago almost 25 years; been engaged in it about 35 years.

Q. Have you, in the course of your business, had occasion to use or provide the use of transom lifters for transom windows in buildings?

A. Yes, sir; I have seen the need of them very much, too.

52 Q. What transom lifters have you and do you use?

A. I never used any but Wollensak's; I saw one other kind, saw them one, two, or three years ago.

Q. State whether or not, in your opinion, the Wollensak transom lifter possesses any value or utility in its use.

A. I think it possesses a very great value; it is particularly use-

ful, and it is the most useful thing of the kind I have ever seen anywhere. You all know how much trouble we had in climbing up on a stool and putting a broom handle or something under the sash to hold it.

Q. Then the Wollensak transom lifter, when first introduced, and at the present time, supplied a recognized want in the business, did it not?

A. Yes, sir; I should say a very great one.

Q. Please look at this model, marked "Complainant's Exhibit Wollensak Transom," and state whether or not it represents the Wollensak transom lifter about which you have been testifying.

A. Yes, sir.

Q. Do you or not specify in your specification of building the use of the Wollensak lifter?

A. I do, sir; altogether. A man in the office not ten minutes ago wants five dozen of them.

Q. When did you first become acquainted with this transom lifter?

A. I should think a year ago; perhaps two years ago; I am quite familiar with hardware stores, and I went in one and happened to see something of the kind, and I went right back and put them in some specifications; that may have been a year ago, and maybe more.

Q. Prior to the introduction of this Wollensak transom lifter, what was used, if anything, for operating transom windows?

A. Well, sir, for ordinary purposes merely a sash spring—a spiral spring with a pulley; the sash was hung in the centre; hung like that (indicating model), in the centre.

Q. Were cords and pulleys ever used?

A. Not that I know of; I never used them.

53 Q. State whether or not this Wollensak transom lifter has become a standard article as known to the profession.

A. I should say it had. I am certain everybody would use them if they could get them.

Q. How long have you known Mr. Wollensak?

A. I don't know him at all, sir.

No cross-examination.

FRIDAY, *November 3d.*

R. L. NORTH, being first duly sworn, testified as follows:

Q. What is your age, residence, and occupation?

A. My age is 51; residence, Chicago; occupation, hardware dealer.

Q. What is the name of your firm?

A. Larrabee & North.

Q. Do you deal pretty extensively in dealers' hardware?

A. Yes, sir.

Q. State how long you have been engaged in this business.

A. So far as the city of Chicago is concerned, 22 years.

Q. Are you acquainted with John F. Wollensak?

A. I am.

Q. How long have you known him?

A. 12 or 14 years.

Q. Do you know anything of what is known as the Wollensak transom lifter?

A. I do.

Q. When did you first have knowledge of it?

A. Well, I should think, my recollection of it would be, that it was in the spring of 1872.

Q. That is as near as you now remember?

A. Yes.

Q. Please look at the model before you, marked "Complainant's Exhibit Wollensak Transom Lifter," and state what it represents, and what you knew about it in 1872, and what you now know about it.

A. That is what I know as the Wollensak patent lifter.

Q. What was in the market, so far as your knowledge goes, prior to the introduction of this transom lifter to the trade, for the purpose of operating transoms?

54 A. Well, I do not remember anything, except a combination of cords and pulleys, or something of that kind. There was nothing specifically made for that purpose.

Q. Within your knowledge or experience was Wollensak the creator of this trade in transom lifters?

A. So far as I know, he was.

Q. Have they or not become a standard article in the trade?

A. They have.

Q. Very extensively?

A. Yes; very extensively.

Cross-examination:

Q. Do you know of any other transom lifters in the market?

A. Yes.

Q. What other transom lifters?

A. There are one or two.

Q. What are they?

A. I see a model here representing the Reiher patent. I think that is it.

Q. What other transom lifters do you know in the market?

A. There was one made somewhat on this principle, which operated with catches, something like the old-fashioned window shade.

Q. Are there any other transom lifters, aside from Wollensak's, sold extensively in the market?

A. The question is a little more general than I can answer; so far as I know, the Wollensak (in this market) lifter is sold in very much larger quantities than any other; it is almost entirely the one sold.

Re-examination:

Q. When did you first have a knowledge of this Reiher patent transom lifter, or the other one which you say was like a window shade?

A. I think this one (Reiher transom) has certainly come to my knowledge within two years; I would really place it at half of that time. Two years will cover the time.

OSWALD LOCKET, being first duly sworn, testified as follows:

Q. What is your age, residence, and occupation?

55 A. My age is 37; reside in Chicago; and am hardware merchant.

Q. What is the name of your firm?

A. Orr & Locket.

Q. Do you deal extensively in dealers' hardware and other hardware?

A. Yes.

Q. How long have you been engaged in the hardware business?

A. Something over 18 years in this city.

Q. Are you acquainted with the Wollensak transom lifter?

A. Yes.

Q. How long have you had a knowledge of that lifter?

A. Ever since it was introduced. It seems to me that it dates back of 1872; I used to run into his shop before 1872, and perhaps noticed its construction. I have certainly known it since '72. It has been the only one in the market. It has gradually crept in the market.

Q. Was it introduced by Wollensak?

A. So far as I know.

Q. Has it become an extensive article in the hardware market?

A. Yes.

Q. Would you regard Wollensak as the originator of that trade?

A. So far as I know, I would.

Q. Do you find the Wollensak transom represented in that model?

A. Yes.

Q. You have sold considerable many of them, have you not?

A. Yes.

Q. What was the state of the art prior to the introduction of the Wollensak lifter, so far as you know?

A. We used all sorts of devices in the shape of pulleys and tackle, but nothing as a transom lifter.

Q. But there was no specialty in the trade?

A. No.

Cross-examination:

Q. Do you know anything about the trade except here in Chicago?

A. No, not definitely, except what I see in the Iron Age and in the Commercial Reporter.

Q. You have no knowledge but that other transoms were made and put in the market before this time?

A. No, I cannot tell only what I know of myself.

56 Q. You have not had that in your store as an article of merchandise?

A. No.

Re-examination:

Q. You refer to the Iron Age. Is that a paper published at Pittsburg?

A. It is a New York paper, giving all the new inventions.

Q. I suppose your business, to a greater or less extent, is such that you see the articles in which you deal catalogued by the wholesale dealers.

A. Yes, to a great extent.

Q. You receive from different parts of the country these catalogues?

A. Yes.

Q. They go generally to the trade?

A. Yes.

Q. Most of the dealers have them?

A. Yes.

Q. How long have these catalogues been in vogue?

A. That is difficult to answer; they gradually crept in, and now they are a universal thing; they have become general within the last 4 or 5 years.

Q. Is it or not true that in these catalogues various articles of hardware are exhibited or referred to?

A. I do not understand that question.

Q. Various articles of hardware—I refer to standard articles—are generally represented in these catalogues?

A. By different makers and inventors, yes.

Q. The articles are illustrated and described?

A. Yes.

Q. These catalogues enable you to understand pretty generally the condition of the trade throughout the country?

A. Yes, with the parties for which they are issued.

Q. I will ask you if in any of the catalogues you have ever seen illustrated and described, prior to your knowledge of the Wollensak transom lifter, any transom lifter whatever?

A. I do not remember of having seen anything of that kind; before that time it was always something that we had to use our own ingenuity about.

Recross-examination:

Q. You do not know but that they may have been in use
57 in other places and in other markets?

A. I do not.

Q. By Mr. ELLSWORTH: In your last answer, what do you understand by other markets?

A. Outside of Chicago.

FREDERICK BAUMANN, being first duly sworn, testified as follows:

Q. What is your age, residence, and occupation?

A. My age is 55; residence, Lake View; occupation, architect.

Q. How long have you been engaged in the business of a practical architect?

A. Oh, years.

Q. How long in the city of Chicago?
A. About 29 years.
Q. Are you familiar with general house architecture in this country?
A. I am, to some extent.
Q. Your profession requires you to be familiar with the various styles of architecture in this country and in Europe?
A. Yes.
Q. You are obliged to examine many books in this connection?
A. Yes; what books are necessary to keep posted on my subject.
Q. Are you acquainted with John F. Wollensak?
A. I am.
Q. How long have you known him?
A. For 15 or 20 years.
Q. Please look at the Complainant's Exhibit Wollensak Transom, now before you, and state what it represents.
A. It represents what is called and ever has been called Wollensak's transom rod.
Q. When did you first know of that?
A. My impression is that it was shortly before the fire. After the fire it was generally introduced here.
Q. State whether or not it filled a want that was generally felt in the trade.
A. It certainly filled a want in the trade; it drew my attention at once, and I acknowledged the use of it.
Q. Prior to the existence of this Wollensak transom lifter, what was there that was known as a means for accomplishing the same purpose?
58 A. Nothing. We had to use a chair to get up to the transom; we sometimes used a wheel and a spring.
Q. Those were used as sort of makeshifts?
A. Yes.
Q. Then, so far as your knowledge goes, was Mr. Wollensak the first to introduce this thing?
A. So far as my knowledge goes, he was the first to introduce it to the trade.
Q. What would you say as to its usefulness?
A. I thought at the time that it was useful, and I think it is very generally used.
Q. Do you or not recognize its use in your business?
A. I do. I do not believe that a transom is used in any house that has not the Wollensak transom lifter.
Q. Referring again to this model, Complainant's Exhibit Wollensak Transom Lifter, I will ask you, when you apply your finger to the lower end of the lifting rod and force it upward, do you or not lift any weight?
A. Certainly; a man lifts a weight by so doing.
Q. What is that weight?
A. The weight of the transom.
Q. Suppose, if you please, that the transom were hung at the bottom, instead of at the top. Would you have any weight to lift?

A. You would to shut the sash.

Q. When you are lifting this weight to close the sash, is there or not any lateral strain or pressure on the lifting rod?

A. There is, of course.

Q. Under certain circumstances—as, for example, if this upper guide were left off—what would be the effect of that lateral strain upon the operating rod?

A. It would bend the operating rod against the door facing.

Q. Under such circumstances, would such a transom lifter be practically operative?

A. It would not, because it would scratch the pane and stop there.

Q. Would it or not bind in the guides?

(Objected to.)

A. It would bind in the guides.

Q. Is it or not essential, in your opinion, to have some guide in the upper end of the lifting rod?

A. It is very essential.

59 Q. In your profession as an architect, do you ever superintend the building or construction of buildings?

A. I always do.

Q. In that superintendence, what work do you do?

A. I see that the work is carried out according to the specifications.

Q. State whether or not you have a practical knowledge of such matters as well as a theoretical knowledge.

A. My knowledge is entirely of a practical nature.

A. LUCAS HUNT, being first duly sworn, testified as follows:

Q. What is your age, occupation, and residence?

A. My age is 36 years; occupation, hardware dealer, and am a member of the firm of Edwin Hunt's Sons; reside at 180 Lake street.

Q. How long have you been engaged in the hardware trade?

A. I have been in it all my life.

Q. Are you acquainted with John F. Wollensak?

A. Yes; I have known him as long as he has been here; I do not know how many years, but I think 15 or 20 years.

Q. Look at the model before you and state what it is.

A. It is the Wollensak transom lifter.

Q. When did you first have a knowledge of that?

A. I could not say; it is a recent article in the hardware line.

Q. Is your firm dealing in these articles?

A. Yes; some.

Q. You have sold considerable number of them, have you not?

A. Yes.

Q. When did you first have a knowledge of this transom lifter?

A. I presume it was soon after he had it patented.

Q. Was it or not introduced to you by Wollensak?

(Objected to.)

A. Yes; it must have been, of course.

Q. After its introduction to the trade, did it or not have a recognized place or become a recognized article in the trade?

A. Very decidedly so.

60 Q. Prior to the introduction of this Wollensak transom lifter, do you know of anything in the trade for that purpose?

A. I do not think there was anything at all; there might have been an arched iron quadrant that you had to get on the top of a ladder to adjust.

Q. Do you or not regard Wollensak as the creator of the trade in transom lifters?

A. Yes; I think he is.

Q. Are these articles not standard articles in the trade?

A. I think so; it — one thing of its kind.

Cross-examination:

Q. You deal in no other transom lifters aside from Wollensak's?

A. I do not think we ever sold any other.

Q. You deal entirely in that kind?

A. Yes.

Q. Do you know of any other now in the market?

A. I believe there is one gotten up by the party that you represent.

Q. You know of nothing else?

A. No.

Q. You do not sell that?

A. No.

Re-examination:

Q. What is the other transom lifter that you know of?

A. This one. (Referring to the Reiher transom lifter.)

Q. Do you know of this one in the trade?

A. I know of its being brought to us to sell.

Q. Who brought it.

A. I guess this man, Reiher.

GEO. E. BLISS, being first duly sworn, testified as follows:

Q. What is your age, residence, and occupation?

A. My age is 48; occupation, hardware dealer; residence, Chicago.

Q. Are you in business for yourself?

A. I am one of the firm of Kelly, Johnson & Bliss.

Q. Do you or not deal extensively in builders' hardware?

A. Yes; we do.

Q. How long have you been in the business?

A. Some 25 years.

Q. Are you acquainted with the complainant in this case?

A. Yes.

61 Q. Are you acquainted with the defendant Reiher?

A. Yes.

Q. Please look at the model marked Reiher Exhibit Transom, and state what it is.

A. It is a device for opening and closing transoms.

Q. When did you first have any knowledge of that transom?

A. About a year ago; that was a little different from this; well, I would say about six months ago.

Q. Has your firm bought that transom of Reiher?

A. Yes.

Q. And sold them?

A. Yes.

Q. To any considerable extent?

A. Well, no; not to a large extent. I guess most of the parties go right to Wollensak or Reiher themselves and buy. We have probably sold fifty or more.

Q. When was the first time that you knew of a transom lifter?

A. Anything of this kind, in 1873, possibly 1872; Wollensak's was the first one that was offered here. Of course, there were other devices for that purpose, such as cords and pulleys.

Q. Is that the Wollensak transom lifter shown in that model?

A. It is.

Q. The Wollensak lifter is the first one that you ever saw?

A. Yes; that worked in that way.

Q. Prior to the time you first had knowledge of it, what was in the market?

A. We had to use cords and pulleys, except what was known as the skylight lifter; there had been an arrangement of that kind for some time, but that could not be used on the transom.

Q. Do you know whether or not Wollensak introduced this article to the trade?

A. Yes.

Q. Has he built up a trade in that?

A. He has.

Q. Has that become a standard article in the market?

A. It has.

Q. How long have you been in Chicago?

A. 17 years next May.

62 Q. Do you know anything of the trade elsewhere than in Chicago?

A. Yes; it is quite extensive.

Q. In what parts of the country?

A. St. Louis, St. Paul, Davenport, New York, Boston, Detroit, Cleveland, Buffalo, and Cincinnati.

Q. Do you or not have a general knowledge of the hardware trade?

A. Yes, sir.

Cross-examination:

Q. Do you know of the hardware trade in Joliet?

A. Yes, sir.

Q. Do you or not know of the hardware trade in Waukegan?

A. No.

G. S. STANDART, being first duly sworn, testified as follows:

Q. What is your age, residence, and occupation?

A. My age is 48; my residence, Chicago; occupation, hardware merchant.
Q. Are you in business for yourself?
A. Yes; I have no partners.
Q. How long have you been engaged in the hardware trade?
A. Since 1855.
Q. Are you acquainted with the hardware trade generally?
A. Yes; I profess to be.
Q. Do you deal in builders' hardware?
A. Yes.
Q. In what department of hardware do you class transom lifters?
A. Builders' hardware.
Q. Do you know Wollensak?
A. Yes; I have known him since 1874; since I have been in Chicago.
Q. Do you know anything about the Wollensak transom lifter?
A. Yes.
Q. How long have you known it?
A. Since 1872 or 1873; I knew of it in Detroit.
Q. Look at the model Complainant's Exhibit Wollensak Transom, and state what it represents.
A. It represents different forms of the transom lifter.
Q. Have you ever dealt in it?
A. Yes.
63 Q. To a considerable extent?
A. Well, quite a number, but not as many as a good many others.
Q. Is it an article of general utility in the hardware trade?
A. Yes; almost indispensable.
Q. Who established the trade in that article?
A. Wolensak.
Q. What was there in the market prior to Wollensak's lifter?
A. Nothing of any importance. There was the cord device, and one made to hang at the top where you could push out the bottom.
Q. How did you get at that?
A. You had to get on a chair or step ladder.
Q. Is this lifter a standard article in the trade?
A. Yes; and has been since it was introduced.

Cross-examination:

Q. You deal in the Wollensak lifter, do you?
A. Yes.
Q. Have you any other?
A. Yes.

B. F. HOMER, being first duly sworn, testified as follows:

Q. What is you age, residence, and occupation?
A. My age is 45; residence, 642 Monroe St.; occupation, hardware merchant.
Q. What is the name of your firm?
A. Hodge & Co.

Q. How long have you been engaged in the hardware trade?
A. 12 or 12½ years.
Q. Are you acquainted with the hardware trade generally throughout the country?
A. Yes.
Q. How did you acquire that knowledge?
A. By buying and selling goods to customers.
Q. Do you have catalogues?
A. Not very extensively; I have some small ones.
Q. Please look at the Complainant's Exhibit Wollensak Transom, and state what it is, if you know.
A. I suppose it to be a transom lifter for raising and lowering transoms, and is known as the Wollensak transom lifter.
64 Q. When did you first have a knowledge of it?
A. 9 or 10 years ago.
Q. How did you become acquainted with it?
A. I think the first acquaintance was by seeing a model of it in his store. I had heard it spoken of before that.
Q. Have you used this article?
A. Yes; I have used them and sold them.
Q. Have you sold them to any extent?
A. We have sold them along every week during the time.
Q. What was there in the trade prior to the introduction of this Wollensak transom lifter?
A. I never knew anything before I saw this.
Q. Who established the trade in it?
A. I think that Wollensak established the trade here.
Q. Is it a standard article of trade?
A. Yes.
Q. Do you know whether he sent out any circulars?
A. He did.
Q. Illustrating and describing it?
A. Yes; showing its working and the various sizes and prices.

Cross-examination:

Q. You sell Wollensak's transom lifter and no other?
A. I have some others.

Re-examination:

Q. What other transom lifter have you sold?
A. This one represented here (referring to the Reiher transom).
Q. Who introduced the Reiher transom to you?
A. Reiher first called my attention to it.
Q. You have had some of them?
A. Had a few.
Q. Have you sold any of them?
A. Some few.

RICHARD PENNINGTON, being first duly sworn, testified as follows:

Q. What is your age, residence, and occupation?

A. My age is 51; residence, Chicago; carpenter and builder, and superintendent for Charles Busbee in building.

Q. How long have you been engaged in your business?

A. 30 years in this city.

65 Q. Please name some of the buildings you have superintended the construction of.

A. At the present time I am superintending the building at the corner of Randolph and Dearborn for Borden; also one on Lake Ave. for John Borden; we have built on Michigan Ave. a block of 13, another block of 4, and in the rear of it on Indiana Ave. another block, and further down on Indiana Ave. another block; and have built several single houses on Michigan Ave.; at one time he was doing more work than any one in the city.

Q. Are you acquainted with John F. Wollensak?

A. Yes.

Q. How long have you known him?

A. 2 or 3 years; perhaps 4.

Q. Do you know a device for transom windows known as Wollensak transom lifter?

A. Yes.

Q. Please look at the model marked "Complainant's Exhibit Wollensak Transom," and state what it represents.

A. It represents the Wollensak transom lifter.

Q. Is that the one about which you testified?

A. Yes.

Q. State whether you have used this Wollensak transom lifter.

A. We have used a good many of them; we used them in the Honore building; we have used a great many of them and always found them to answer the purpose.

Q. State whether you have found them of utility and value.

A. They are very practical indeed; I could not see how they could be improved and answer the purpose for which they were designed.

Q. Before you became acquainted with the Wollensak transom, what was the state of the art?

A. I never saw anything but pulleys and cords and I have never heard of anything.

Q. Referring now to Wollensak model before you, will you state what was the office of the upper guide?

A. It is a part that is indispensable; it would not work without it to any advantage.

JAMES M. HORTON, being first duly sworn, testified as follows:

66 Q. What is your age, residence, and occupation?

A. My age is 54; residence, 499 West Adams street; occupation, hardware merchant, and am a member of the firm of Wm. Blair & Co.

Q. How long have you been engaged in the hardware trade?

A. With the exception of about 6 or 7 years, I have been in the business since 1842.

Q. Elsewhere than in Chicago?

A. I commenced in Albany, N. Y. At that place I was in a large wholesale and retail house about 7 or 8 years; then I went into a house was more exclusively wholesale for about the same length of time; I was in the hardware business about 2 years in Ohio, and have been in Chicago since 1866.

Q. Are you or not acquainted with the hardware trade in the United States?

A. That is a pretty broad question; I am not acquainted with the Southern trade, but throughout the North I am.

Q. Are you acquainted with it in New York and Boston?

A. I have never been in business in those cities, but there is no peculiarity in the New York and Boston trade; they all sell the same kind of goods.

Q. Are you acquainted with John F. Wollensak?

A. I am in a business way.

Q. How long have you known him?

A. I have known the Wollensak family since 1842; I knew the old man Wollensak in Albany; he was a locksmith.

Q. Do you know what is known as the Wollensak transom lifter?

A. It seems to me that it was the fall after the fire that we had letters from parties in the East enquiring about it and we made some purchases; I cannot say positively as to the time; it may have been later than that, but not earlier.

Q. Do you or not sell this transom lifter?

A. Yes, but we do not carry them in stock, but buy them of Wollensak and sell them.

Q. Who established the trade in this Wollensak transom?

A. Wollensak, I suppose.

67 Q. Is it or not a standard article in the hardware trade?

A. For that purpose it is recognized as such.

Q. Prior to your knowledge of this Wollensak transom lifter, what was there in the trade or general use for opening and closing transoms?

A. I never saw anything especially for that purpose; we used cords and other methods of keeping the windows closed. I have seen them use the boot-jack.

Q. You think it was in 1872 that the enquiries were made for this transom lifter?

A. Yes.

Q. Do you remember who these enquiries were from?

A. I have no recollection; I have an impression that it was some one in Rochester. He gave us a description of it, and requested us to get it for him and send it to him, which we did. I have no means of ascertaining now who it was.

Cross-examination:

Q. Do you sell any other transom lifters aside from Wollensak's?

A. No.

AMOS GRANNIS, being first duly sworn, testified as follows:

Q. What is your age, occupation, and residence?

A. My age is 55; occupation, builder; residence, Chicago.
Q. How long have you been engaged in building?
A. About 35 years.
Q. Have you built quite extensively in the city of Chicago?
A. Yes.
Q. Name some of the buildings you have erected here.
A. Before the fire I built two or three blocks on Lake St., a block on Wabash, one on Randolph, two on the corner of S. Water and Dearborn Sts., 75 & 77 Wabash Ave., building at the corner of Clark and Madison, a building on Clark, between Lake and Water; 2 or 4 on Water street, and several fine dwellings.
Q. Are you acquainted with John F. Wollensak?
A. Yes.
Q. How long have you known him?
68 A. By reputation since the fire, and probably before the fire, and personally I have known him 2 or 3 years.
Q. Do you know an article of dealers' hardware known as Wollensak's transom lifter?
A. Yes; have known it since the fire, and have used it.
Q. Have you used it to any considerable extent?
A. Not to any great extent; we used it after the fire.
Q. As a practical device, does it possess any special merit?
A. Well, yes; I think it is the best device that I know of for the purpose.
Q. Prior to your knowledge of this transom lifter, what was there in use for that purpose?
A. A cord and pulley.
Q. Was his the first known to the trade?
A. The first to my knowledge.
Q. Look at the model marked "Complainant's Exhibit Wollensak Transom," and state what it represents.
A. It is Wollensak's device for transom lifters.
Q. Please observe the guide for the upper end of the operating rod, and state if it serves any special function.
A. Yes; I think it necessary to the smooth and even working of the device that that guide should be there.
Q. Without it, would there be a practical defect in the machine?
A. I think so.
Q. What would be the result?
A. In raising this (illustrating) up it would press this in (illustrating) and cause friction; it would not work near as easy.
Q. Would it make the whole thing impracticable in its operation?
A. I would hardly call it a successful operating device.

WILLIAM S. BATES, being first duly sworn, testified as follows:

Q. What is your age, residence, and occupation?
A. My age is 28; occupation, mechanical engineer and solicitor of patents.
Q. Have you or not had any experience in the examina-
69 tion of mechanics of various kinds; and, if so, what experience have you had?

A. I have; I have almost daily to examine different kinds of machinery and mechanical devices, for the purpose of determining their construction and mode of operation, their efficiency for the purposes for which they are designed, and their similarity and differences, and am frequently called on to testify as to such comparisons as an expert.

Q. Do you devote considerable time to the study of mechanical pursuits; and, if so, what have been your studies?

A. For some 12 or 14 years past I have devoted almost all of my time to mechanical pursuits and studies, and have taken an engineer's degree at the Polytechnic Institute of Troy, New York, and have studied mechanics and engineering in Europe; since which time I have been engaged in my present occupation.

Q. Have you or not ever examined the subject of transom lifters and their mode of operation?

A. I have.

Q. Have you read the patent granted to John F. Wollensak for improvements in transom lifters, reissue July 20th, 1880, reissue number 9307, marked "Wollensak's Exhibit Patent," in this cause, and do you understand the invention therein shown, described, and claimed; if yea, state what the invention is as far as you know, as shown by the patent?

A. I have read a copy of the patent referred to and believe I understand it. The invention set forth in this patent, as I understand the same, refers to transom lifters and consists—

1. In a combination of elements, which are the transom, the transom lifting arm, the operating rod, and the guide for the upper end of the operating rod, for the purpose of preventing it from being bent or displaced by the weight of the transom.

2. In a combination of elements, which are, a roller at the junction of the lifting arm and upright rod of the transom lifter, the lifting arm and the upright rod.

70 3. In a combination of elements, which are the lifting arm and upright rod of the transom lifter, a guide for the upright rod above the junction of the lifting arm with it, a guide for the lower end of the upright rod, an arm or link marked "*a*" in the patent, and called the "lifting arm," and a prolongation of the upright rod or equivalent thereof.

Q. Please look at the model marked "Complainant's Exhibit Wollensak Transom," and state what it represents, if you know.

A. I have examined the exhibit. It represents three transoms hung respectively at the top, middle, and the bottom, in connection with transom lifters, the whole being as described in Wollensak's patent. The one hinged at the bottom being slightly different as regards the construction of the guide for the upper end of the upright rod. This difference, however, is not sufficient to make it a substantially different device from that described in the patent.

Q. State whether or not, in your opinion, the principle and mode of operation illustrated in the three devices composing said model differ from the principle and mode of operation of the device shown, described, and claimed in the Wollensak reissued patent.

A. They do not; and more than this, the devices are structurally identical with those shown in the Wollensak patent, with the exception of the one hung at the bottom, and this is identical in principle and function, and substantially identical in the construction and mode of operation.

Q. Please compare the transom lifters marked "Complainant's Reiher Transom" with the reissued patent, marked "Wollensak's Exhibit Patent," and state wherein it differs from or is similar to the transom or transom lifter shown, claimed, and described in said patent, and give such reasons as are necessary in your opinion.

A. I have examined the model referred to, and, in my opinion, it is substantially identical with the device described in the Wollensak patent in the first and third claims. There are, however, structural differences which I will point out further on.

71 The first claim in the Wollensak patent, as I have stated, describes a combination of a transom with a transom lifting arm and operating rod, and a guide for the upper end of the operating rod, to prevent it from being displaced or bent by the weight of the transom as shown and described. The operating rod is an upright rod attached to one side of the door frame and arranged to slide vertically in guides on the door frame. The lifting arm is a link pivoted to the upright rod at a suitable point, and pivoted also to the transom sash, so that as the upright rod is moved up the transom sash is opened or closed as the case may be. If there were no guide for the upper end of this sliding rod, it is obvious that it would be bent by the weight of the transom, and thus bind in the lower guide and in course of time become useless. To prevent this, a guide is provided to cause the upper portion of the upright rod to move always in the same path, thus effectually preventing its being bent or displaced.

Exhibit Reiher transom, assuming it to represent a transom and lifting device, shows the transom sash and upright rod arranged to slide vertically in guides at one side of the door frame, a connecting link attached to this upright rod and the transom sash, so that the latter will be opened and closed by a vertical movement of the upright rod, and a guide which causes the upper end of the upright rod to move always in the same path, thus effectually preventing its being bent or displaced. This guide differs from the Wollensak guide as follows: Wollensak's guide as shown, consists of a simple eye through which the upright rod passes. The Reiher guide, as illustrated in the Exhibit Reiher Transom, consists of a piece of casting forming ways or guides for the traveling block attached to the upper end of the upright rod. The operations of the two devices are identical; in both there is a transom opening up or down: in both there is an upright rod attached to the door frame; in both there is a lifting arm connecting the upright rod with the transom sash, so that the

72 latter will be opened or closed by a vertical movement of the upright rod, and in both there is a guide for the upper part of the upright rod, to prevent such rod from being bent or displaced by the weight of the transom.

I therefore say that, so far as the combination set forth in the first

claim of the Wollensak patent is concerned, the two devices are identical.

As regards the second claim of Wollensak's patent, it will suffice to say that the roller "R," which constitutes an element in the combination specified in this claim, is not present in the Exhibit Reiher Transom, and the two devices differ, therefore, in this respect, though the other two elements are present. I therefore say that so far as concerns the combination expressed in the second claim of Wollensak's patent, the two devices are different.

The third claim of the Wollensak patent, as I have stated, describes a combination of a guide marked "G," arranged above the junction of the upright rod and lifting arm, the prolonged rod "U," the guide for the lower end of the upright rod and the arm marked "A," which connects the upright rod with the transom sash. The object of this arrangement I understand to be as follows: The guide "G" with a prolongation of the rod "U" constitutes a guide for the upper end of the upright rod, which shall guide that rod throughout the entire extent of its movement, so that it shall at no point of its movement be liable to be bent or displaced by the weight of the sash or transom. I do not understand it to be material to this device that it be exactly as represented in the drawing of the patent, provided it is substantially the same, that is to say, performs the same function in the same manner, and accomplishes the same purpose; and the patentee expressly states that he does not limit his invention to this particular construction.

In the Exhibit Reiher Transom I find the upright rod, the guide for the lower end of the upright rod, and the arm "A," all
73 exactly as in the Wollensak patent. I also find a guide at the upper end of the upright rod, as already stated, consisting of a pair of ways and traveling block, which guide extends above the junction of the lifting arm and upright rod in the one case and below it in the other, when the sash is closed, and in both cases is adapted to and does form a guide for the upper end of the rod throughout the whole extent of its movement so as to render it impossible to bend or displace the rod by the weight of the transom. This pair of ways and sliding block I consider to be the perfect mechanical equivalent of the prolonged rod and eye of Wollensak's patent, for the reason that it performs the same function in the same manner, and is used to accomplish the same purpose, and for the further reason that the two constructions have long been known as equivalents for each other for guiding purposes in other kinds of machinery.

For these reasons, I say that so far as concerns the third claims of Wollensak's reissue, the devices described in the reissue and those illustrated in the Exhibit Reiher Transom are the same, and that the differences in the construction are merely structural and not material. I may say also that the modes of fastening the upright rod at any desired position are different in the two devices, consisting of a thumb screw on the lower guide of the Wollensak device, and a series of notches and pin in the piece of casting forming the ways of the Reiher device. This arrangement, however, and some other

minor details are not referred to in Wollensak's patent as constituting a part of his invention, and I will not, therefore, waste time in speaking of them.

Cross-examination by Mr. TOURTELLOTE:

Q. Where do you live?
A. I am at present in Chicago.
Q. How long have you lived there?
A. About three months.
Q. Where did you live prior to coming here?
A. In Cincinnati, Ohio.
74 Q. How long have you lived here?
A. It has been my home since I was born.
Q. What business are you engaged in here in Chicago?
A. Mechanical engineering.
Q. Where is your place of business?
A. 149 La Salle street.
Q. Are you alone or with some one?
A. Alone.
Q. In what business were you engaged in in Cincinnati?
A. Mechanical expert and soliciting patents.
Q. How long have you been in that business there?
A. 4 years, I think, as expert, and before that I was solicitor of patents simply.
Q. What branch of mechanical engineering were you employed in?
A. No particular branch.
Q. What kind of mechanical engineering did you do in Cincinnati while you were there?
A. I never said that I did any.
Q. Did you do any?
A. Yes; I presume it might be called so; I was employed not only in giving testimony as a mechanical expert, but occasionally made tests of machinery.
Q. What tests of machinery did you ever make?
A. I cannot pretend to describe all of the tests that I have made. I have made tests in agricultural machinery, tobacco machinery, and other kinds.
Q. For whom did you make any test of machinery in Cincinnati while you lived there?
A. I have made tests for John Dodd, McRoyer, of Dayton; John Quinzer & Bro., of Louisville; Miller & Worley, of St. Louis, and I have made a good many examinations of machinery and reports on its construction for other parties, among whom I may name the Holly M'f'g Co., of Lockport, N. Y., and Comstock, Booth & Co., of Columbus, Ohio, and others.
Q. Do you remember any others for whom you made tests aside from these that you have mentioned?
A. I do not think of any others.
Q. What was the nature and character of the tests made
75 by you for the Holly Co., of Lockport, N. Y.?
A. I did not make any tests for that company; I simply

made an examination of water works machinery, and reported on the construction of the same. I do not know how many, but I shonld think 16 or 20.

Q. For that company?

A. Yes; of such examinations.

Q. What was the character of the examinations; what was the object of it?

A. I do not know what was the object; you will have to go to the company for that.

Q. Do you remember any other persons or companies that you made tests for while living there, aside from the Holly Co.?

A. Except them and the others that I have mentioned, I do not remember any.

Q. Please give any tests that you have made for any others, and state of what it consisted.

A. The tests that I made for John Dodd were on horse hay rakes, for the purpose of determining the strain on certain parts of the rake. The test made for Quinzer Bros. was to determine whether a certain machine would operate under certain conditions.

Q. Can you remember any other test that you made aside from those that you have mentioned that you made while in Cincinnati?

A. Yes; for Comstock, Booth & Co. I examined and reported on the construction and operation of some machinery for making iron carriage seats. These are all that I now remember.

Q. Can you remember any tests that you made while living in Cincinnati, aside from those you have named *in extenso?*

A. That is all that I now recollect.

Q. These two tests that you have last mentioned are all that you can remember?

A. Those I have mentioned; I have mentioned more than two.

Q. Well, aside from the three tests that you have named?

A. That is all that I recollect.

Q. In what business were you engaged in before you came to Cincinnati?

A. In the business of getting educated.

Q. Where?

76 A. Part of the time at Cincinnati, part of the time in Troy, N. Y., and part of the time I was abroad. I do not know that I have been at school at any other place. I do not think of any now.

Q. How long were you at school at Troy, N. Y., in this special branch of mechanical engineering?

A. I studied engineering 4 years.

Q. Under whom, or in what institution?

A. In the Rensalaer Polytechnic Institute.

Q. How long were you abroad engaged in the enterprise of perfecting that education in mechanical engineering?

A. Two years, I believe.

Q. Where were you the two years?

A. At Berlin, Prussia, part of the time, and Dresden, Saxony, part of the time.

Q. How long were you at these places perfecting your education in mechanical engineering?

A. I believe I was at Berlin five months, and the balance of the two years I was in Dresden.

Q. You were pursuing your studies all of that time?

A. Yes, sir.

Q. At what institution in Berlin did you pursue your studies?

A. The University of Berlin and the School of Mines.

Q. How long were you at the last-named institution?

A. I was at both at the same time.

Q. How long were you there?

A. I was at that place five months, as I have said.

Q. Were you pursuing your studies all of the time in these institutions?

A. Yes, sir.

Q. Had you ever engaged in any business or practically engaged in any profession, after you say you educated yourself, until you came to Cincinnati?

A. No.

Q. With whom did you have your office, if any one, while you were in Cincinnati?

77 A. I began in the office of S. S. Fisher, a patent lawyer, and after his death I was employed for a time by Hatch & Parkinson, his successors, and then went into business for myself.

Q. How long were you with Fisher?

A. From the fall of '73, when I got back there from abroad, until the time of his death, which was in August, 1874.

Q. By whom were you employed after that time?

A. By his successors, Hatch & Parkinson.

Q. How long did you continue in their employ?

A. Until the spring of 1876.

Q. In whose employ did you go after that?

A. No ones.

Q. In what capacity were you employed by Fisher and his successors?

A. In preparing applications for letters patent and prosecuting the same, and also as an assistant in the mechanical part of their office.

Q. Did you remain in Cincinnati most of the time until you left to come to Chicago?

A. Yes, I presume I was at home the greater part of the time.

Q. Have you ever been engaged in any court of the United States as an expert?

A. Yes.

Q. What one?

A. I cannot name them all.

Q. Name one.

A. Birdsall Holly *v.* The Virgennes Machine Co.; J. B. Smith *v.* Gaar, Scott & Co.; Gottfried & Holbeck *v.* The Conrad Seipp Brewing Co.; Somebody *v.* William Smith; and a good many others.

Q. Have you any recollection of the name of any other, aside from

those that you have mentioned, in which you have testified as an expert?

A. Yes.

Q. Please give them.

A. Miller & Worley *v.* Forre; Same *v.* Andrews, and two or three other cases in which there was the same complainants; Hubble *v.* Comstock; Royer *v.* Russel; National Hay Rake Co. *v.* Taylor; I could give the names of all by reference to my books. But I do not carry the names in my mind.

78 Q. Will you please give me the subject and the object of your testimony in the case of Birdsall Holly *v.* The Virgennes M'f'g Co.?

A. It was testimony for the complainant in a suit brought by him under letters patent for infringement of the same by the defendant, by the manufacture and erection of water works machinery at different places.

Q. What was the scope of the examination on the next case, viz., Smith *v.* Gaar, Scott & Co.?

A. That was a threshing machine case in which I appeared for the complainant in an affidavit on a motion of some kind, and involved a comparison of the patents of complainant and the machines and patents of the defendants.

Q. What was the scope and subject of your testimony in the case of Gottfried *et al. v.* The Conrad Seipp Brewing Co.?

A. That was a deposition for the defence on a machine for pitching beer barrels.

Q. What was the nature and subject of your testimony in the case of Smith?

A. That is where I was for the defence in the case where a patent water-closet was involved.

Q. What was the subject and scope of your examination in the case of Miller & Worley?

A. That and the other cases by the complainants is where I appeared for the complainants, and the subject was a machine for plug tobacco.

Q. What was the subject of your examination in the case of Hubble *v.* Comstock?

A. There I gave testimony for the defence, and the subject was a patent seat.

Q. What was the scope and nature of your testimony in the case of National Hay Rake Co. *v.* Taylor?

A. That horse rake case is one in which I was called upon to examine pretty near all of the patents for hay rakes (horse) that have been issued, in which I gave an affidavit for the defence.

Q. Have you any recollection now of any other cases in which you have made affidavits or given your testimony than those you have named?

A. Birdsall Holly *v.* Cummings, testimony on a hydrant, in which I appeared for the complainant; also, McGowan *v.* McGowan, which was a case on a tobacco compress, in which I was called for the defence; I do not think of any other now.

79 Q. Were you engaged in any other business in Cincinnati except the expert business you have mentioned in your answers to the cross-examination?

A. At one time I practiced law to a limited extent and kept that up for not quite a year.

Q. Was that during the last four years of your residence in Cincinnati?

A. It was in the spring of 1876 and until some time in 1877.

Q. How much of that time was you engaged in the practice of the law exclusively?

A. Not exclusively at all, I was engaged as solicitor of patents. I was frequently called upon for opinions on mechanical and patent matters.

Q. When did you perfect yourself in the study of law so as to be able to practice law?

[A.] While I was with Fisher and his successors I attended lectures at the Cincinnati Law School, and graduated there and was admitted to the bar.

Q. In what year were you admitted to the bar?

A. I believe it was in 1875.

Q. I believe you said you were 28?

A. I am nearly 29.

Q. In what city did the attorneys reside in the suits in which you testified, or in which you gave your affidavit?

A. Some in Cincinnati, some in Louisville, and one in Dayton and some in Chicago.

Q. What firms in Chicago have you done business for?

A. West and Bond.

Q. What firms have you done business for in Cincinnati?

A. John E. Hatch, Arthur Stem, R. E. Parkinson, Mr. Ellsworth here, I do not think of any others.

Q. Did you, at any time, ever give any testimony unfavorable to the person for whom you were called?

A. Not that I know of; I must refer you to the parties.

Q. Your testimony, so far as you understood it, has been favorable to the theory of those who called you and for whom you testified as an expert?

A. Yes; certainly or they would not have called me.

80 Q. Have you had any other experience in business in the line of mechanical engineering than what you have given in your cross-examination?

A. I believe that is all, except occasionally to make calculations of one kind and another.

Q. Calculations of what kind?

A. Of the sizes of parts of machinery, strains, capacity of steam engines, and pumps.

Q. Have you been engaged in the city of Chicago as an expert in any case prior to the one now in hearing?

A. Yes; in the beer barrel case referred to.

Q. What was the nature and scope of your testimony in the beer barrel case?

Q. Was that given since you have been here or before?

A. Since.

Q. What was the nature and scope of your testimony in reference to beer barrels?

A. I have already stated that I was called on by the defence in reference to machinery for pitching beer barrels.

Q. What has been your experience here aside from the beer barrel case?

A. In the McGowan case of which I have spoken, in the Royer Threshing Machine case of which I have spoken, and I think there is another case, but I cannot remember the name of it. These are the only cases in which my work is completed.

Q. Were your services in the shape of depositions or affidavits in the cases last named?

A. Depositions, as I understood it.

Q. You have already made affidavit in this case for the complainant?

A. Yes.

Q. Have you an office alone or in connection with some one in Chicago?

A. My office is with James T. Cushing, general Western agent of the Holly Water Works or Manufacturing Co. I should say, I may also say that I recently have formed a partnership with my brother as an engineer and contractor and builder of iron bridges, and that I consider his office as also, in part, my own. I spend my time in part in one office and part in another, according to what I am at.

81 Q. Is Cushing the agent of the company for whom you appeared as an expert?

A. He is the agent of the Holly Manufacturing Co., in whose behalf I have been called as stated; that is how I met him.

Q. Have you seen in operation a transom lifter like Wollensak's, with the exception that the operating rod terminated at the injunction of the operating rod and the lifting arm?

(Objected to, as immaterial and incompetent.)

A. If you mean like the illustration in the Wollensak transom in which the sash is hung at the bottom, then I say that I have seen one somewhere, but do not remember where. There is one in my office, but I do not remember whether it is that kind or not.

Q. Have you any practical knowledge of the operation of such a transom lifter as that I have described?

(Same objection.)

A. If that is the kind that is in my office, then I have used one; if that is not that kind, then I have not used it.

Q. Do you know what kind of a transom lifter it is in yonr office that you refer to?

A. Yes, with the exception that I do not remember what kind of an eye it has—whether it has a traveling eye or fixed eye.

Q. Do you know whose patent is? Whose alleged patent transom lifter it is?

(Same objection.)

A. I believe it is Wollensak's; it looks like his, and he said that it was his; I did not see it made, put in, and therefore cannot certainly say.

Q. Is it constructed after the manner of Wollensak's which you have referred to in your testimony?

(Same objection.)

A. Yes.

Q. Do you know whether or not it has an operating rod prolonged above the junction of the operating rod and the lifting arm?

(Same objection.)

A. Certainly it has, but I do not know whether this prolongation is fixed or movable.

Q. Have you ever examined it to note its operation or construction?

(Same objection.)

A. Not especially; I have examined it, but did not charge my memory with it.

82 Q. When?

(Same objection.)

A. I do not remember, but I think it has been some weeks since I took particular notice of it.

Q. Have you examined any other transom except Wollensak's and Reiher's transom?

(Same objection.)

A. I have not.

Q. You never have seen any other?

(Same objection.)

A. I have not.

Q. When were you first called upon to make an examination of the transom lifter to which you have referred in your direct examination?

A. A few days before I gave my affidavit in this case.

Q. By whom were you called upon to do so?

A. Mr. Ellsworth.

Q. Then I understand you to say that you have never had any practical knowledge of the operation of a transom lifter where the operating rod did not extend above the juncture of the lifting arm and the operating rod?

A. I have not said so.

Q. Have you any knowledge of the operation of such an article practically?

A. I have said that I saw one somewhere, and I now say that I tried its workings, but do not know whether it was in my office or

in Wollensak's store, or somewhere else, but I think it was there in my office or Wollensak's store.

Q. Have you any very positive recollection as to such an examination?

A. Not very definite.

Q. Have you had any practical knowledge of any mechanical construction of any kind? I mean by this, have you took any part in any mechanical construction; any knowledge except mere theory?

A. Yes.

Q. What?

A. I occasionally have to go into the shop and work, and while I was in Cincinnati I had tools of my own, with which I made various experimental machinery.

Q. How much time did you employ in this experimental
83 labor?

A. A portion of my spare time since I was a boy; sometimes more and sometimes less.

Q. Did you have much time while acting as clerk for Fisher and his successors, and studying law, and attending law school, to attend to such mechanical pursuits?

A. I had a portion of the evenings and Sundays.

Complainant's Evidence in Rebuttal.

JULY 9TH, 1881.

Present: Ephraim Banning, Esq., for complainant, and F. W. Tourtellotte, Esq., for defendant.

Complainant's counsel offers in evidence the file wrapper and contents, of the appeal to the examiners-in-chief, in the matter of the application of John F. Wollensak, on which the reissued patent No. 9307, now in suit, was issued, and the same is marked "Complainant's Exhibit Wollensak Appeal."

(To the offering of which the defendant objects, on the ground that it is immaterial, irrelevant, and improper testimony.)

WILLIAM S. BATES, being recalled, testified as follows in behalf of complainant in answer to interrogatories propounded by Mr. BANNING:

Q. You have already been examined as a witness in this cause?

A. Yes, sir.

Q. Have you examined the specification and drawings of the Bayley & McCluskey patent No. 79541, issued July 7th, 1868, for railroad car ventilators, and do you understand the same?

A. I have examined and believe I understand it.

Q. In your opinion, does the Bayley & McCluskey patent describe and show the inventions and combinations described and claimed
in the first and third claims of complainant's reissued patent,
84 sued on in this cause? If you say it does not, please give your reasons fully for any opinion you may express?

A. It does not. My reasons for this opinion are as follows: The improvements set forth in complainant's reissued patent, as previously stated, are, first, a combination with a transom, its lifting arm and operating rod, of a guide for the upper end of the operating rod to prevent its being bent or displaced by the weight of the transom; and, third, the guide G′, arranged above the junction of the lifting arm and the operating rod, in combination with the prolonged rod U, guide G and arm A.

The Bayley & McCluskey patent shows and describes certain alleged improvements in railroad car ventilators. These consist of a series of windows in the raised roof of the railroad car, said windows being arranged to open outwardly, and being operated by means of a lever, two sliding bars, and a series of links connecting these bars with the window. This device differs from the complainant's in the following particulars: It is not a transom window and has no relation to transoms; there is no lifting arm and operating rod for opening the transom window or for any other purpose; there is no guide for the upper end of the operating rod; the sliding bar of this patent is not an operating rod like the complainant's; it does not sustain the weight of the transom and is not liable to be bent or displaced by the weight of the transom. This patent, therefore, does not contain the combination of the transom, the lifting arm, operating rod, and guide for the upper end of the operating rod, and does not, therefore, describe or show the improvements specified in the first claim of the complainant's reissue.

As for the third claim, this Bayley & McCluskey patent, as already stated, does not contain the lifting arm and upright rod, nor the guide G′ of complainant's patent. Neither does it contain any prolongation of an upright rod, nor any guide equivalent to the guide G of complainant's patent, and does not, therefore, in my opinion, contain the improvements specified in the third claim of complainant's reissue. In addition, this Bayley & McCluskey is a different device from complainant's, and the two are not interchangeable in whole or in their parts; one opens vertically and the other horizontally; and the Bayley & McCluskey could not be arranged over the doorway, so as to take the place of the complainant's. In the Bayley & McCluskey the window opens outwardly and away from the sliding bar, and in the complainant's the transom opens inwardly and towards the operating device. The Bayley and McClusky device could not be made to open inwardly without material changes in the operating device, for the reason that if the windows were made to open inwardly, the sliding bars and links would either bind them, so that they would not open at all, or would not have any effect on them, according as the window is hinged upon the one side or on the other. Another point of difference, which, however, is not material, is that there is no locking arrangement in the Bayley & McCluskey, and such an arrangement is unnecessary, as when opened the windows have no tendency to close, and when closed they have no tendency to open; exactly the reverse is the case in the complainant's transom. For all these reasons I consider the two devices as different.

Q. Do you consider that the Bayley & McCluskey patent suggests to a mechanic, ordinarily skilled in the art, the invention described in complainant's reissue, and particularly mentioned and described in the first and third claims thereof?

A. I do not, for the reason that the two devices are different in function and purpose and method of operation. In the Bayley & McCluskey the sliding bar is mounted in guides simply to hold it in place, for otherwise it would fall down and be useless. There is no strain on this bar which would bend it or destroy its usefulness, and the function of the guides is simply to support the bar against its own weight. In the complainant's device the guides are not necessary to support the bar, as it would hang in position without them; they are intended simply to prevent the strain, due to the
86 weight of the transom, from bending or displacing the rod which it would do if the guides were absent. The Bayley & McCluskey is not a transom, and being a different device, operating in a different way, for a different purpose, I do not consider that it could suggest the complainant's improvements.

Q. Have you read the deposition of the witness Dayton, the defendant's expert?

A. Yes, sir.

Q. State whether, in your opinion, the differences which he attempts to point out between the complainant's transom lifter and that made by the defendant are material, and give your reasons for any opinion that you may express.

(Objected to.)

A. They are not material as I understand him. The differences that he points out, as I understand him, are chiefly that in the complainant's device the strain due to the weight of the transom is transmitted to the operating rod, and that that rod has therefore to withstand the transverse strain, while in the defendant's device the strain is transmitted directly to the guide, and does not act on the operating rod at all. I do not find it anywhere stated in the complainant's patent that this arrangement forms any part of his invention; and I therefore consider it entirely immaterial whether the strain comes on the vertical rod or not, provided there is a guide at the upper end of said rod to finally take the strain. In the defendant's device the strain comes on the guide simply because the guide operates at the point of junction of the operating rod and the lifting arms. If the guide were above or below this point the strain would come on the operating rod exactly as in the complainant's device. If in the defendant's device the guide was removed, the operating rod would be bent and displaced, and become useless, exactly as complainant's would if his upper guide were removed. The defendant's device, therefore, obviously contains the same elements, combined and operating together for the same purpose as the complainant's, and are therefore the same, so far as concerns the com-
87 plainant's invention as set forth in his first and third claims, and the slight structural differences mentioned by Mr. Dayton are merely structural and of no materiality to the invention.

Q. In your opinion, is the defendant's expert correct in saying that so far as the function of the guide G′ in complainant's patent is concerned, "the Reiher transom presents a totally different principle from that exhibited in the Wollensak transom model"?

(Objected to.)

A. No; in my opinion, he is not; the two devices are obviously the same, as they both act to guide the upper end of the operating rod and prevent its being bent or displaced by the weight of the transom. It is true that the defendant's guide has an additional function of locking the transom in any position, but this in no way interferes with its other function of guiding the rod. This locking device is contained in the complainant's device by an attachment on the lower guide instead of the upper one.

Q. Is there anything in the complainant's patent, or in the previous art as here shown, which in your judgment necessarily requires that the weight of the transom must be communicated to or sustained at any particular or given point of the lifting rod, so far as the combinations mentioned in the first and third claims are concerned?

A. Nothing whatever. There is no mention made in the patent of the point on the operating rod which received the strain, any more than that the upper guide is provided to prevent the rod from being bent or displaced by this strain. And, though the patentee shows one particular method of accomplishing this, he expressly states that he does not limit his invention to this construction. In the sixth paragraph of the specification, lines 35 to 42, it is stated: "I wish it clearly understood that I do not limit my invention to this construction, but regard it as covering broadly any construction, combination, or arrangement of parts which shall support the long or operating rod and prevent it from being bent or displaced by the weight of the transom." This clearly shows that he contemplated
88 other forms as well as the one represented in the drawing.

As for the previous art, it shows nothing, in my opinion, which at all affects this patent, so far as the art is set forth here in the exhibits to which I have been referred, or which have been mentioned in this record, and I know of nothing else outside of this.

Q. Do you consider that the "steam engine structure" mentioned by Mr. Dayton, or the "common force pump" mentioned by other witnesses, would suggest the complainant's invention, involved in this suit, to a mechanic ordinarily skilled in the art?

A. I do not; I do not see that the steam engine or pumping device have any further bearing on complainant's patent than to show that the complainant's and defendant's forms of guide were well-known equivalents of each other for guiding purposes at the time of the complainant's invention. Neither the steam engine nor the pump contained the combination of the complainant's patent, nor any equivalent combination. They have no transom lifter; they have no transoms, no lifting arms, no operating rods, no rod guides for the upper end of the operating rod, and no guides or other devices to prevent the operating rod from being bent or displaced by the weight of the transom, or anything else; and they could not, therefore, suggest these

combinations—though to a person familiar with the complainant's combination they might suggest the use of another form of guide in the place of the particular guide which complainant has shown in his drawings.

Adjourned until Monday, July 11, 1881, at 4 o'clock p. m.

MONDAY, *July* 11, 1881.

Parties met pursuant to adjournment, and adjourned until to-morrow, July 12th, 1881, at 2 o'clock p. m.

TUESDAY, *July 12th*, 1881.

Examination continued pursuant to adjournment; present as before.

Cross-examination by Mr. TOURTELLOTTE:

Q. What do you call a transom, Mr. Bates?

A. Strictly, a transom is a bar that goes across the top of a
89 door, between the door and the transom window, and as used in complainant's patent it means the window over the top of the door.

Q. Would it not equally apply to an opening with a sash in it, if it was not over a door, but over some other opening than a door?

A. I think not. It is commonly used for the window over the top of a door, but strictly, I believe the transom is the bar across an opening, whether a door or window.

Q. Would or not the operation of the Wollensak lifter be the same if applied to a window which was not over a door or over the opening?

A. Other things being the same, it would.

Q. Would not the operation of the Wollensak lifter be the same if applied to several transoms, one above the other, as it would if it were but one, connected, of course, each of them, by a prolongation of the rods and arms for each transom?

A. It would if there were no change except the increase in the number of windows.

Q. Would there be any change in the device in connecting it with any number of windows, one above the other, simply by reason of the fact that it was connected with two or three instead of one?

A. No; it would simply involve a prolongation of the rod and addition of lifting arms.

Q. Are not transom sashes sometimes hung in the center so as to swing partially outwards and partially inwards on being opened?

A. Yes, sir.

Q. In case of a sash being hung in the center as mentioned, is there any weight that presses against the operating rod sufficient to bend it or displace it, and does it sustain the weight of the sash in operating the rod?

A. Not when the sash is evenly balanced, but they are generally made heavier towards the bottom.

Q. Then in case of a sash being equally balanced, the device of

the upper guide in the Woltensak patent is not necessary to hold the operating rod in place?

A. Yes, sir.

90 Q. Why?

A. In buildings the sash almost invariably sticks on account of the settling of the walls or some similar cause, and this has to be overcome. I had one recently in which I had to get a hammer to get it open.

Q. Then there is some other force to be overcome than the weight of the sash in opening and closing it?

A. Yes; in such cases.

Q. In case so far as it is necessary to open the sash, whether they are hung in the center, would it not be necessary in any device to have a guide above the junction of the lifting arm and the operating rod to hold it in place and prevent its being bent?

A. Either above, at, or near the junction, it would be very desirable at least, though it is not so necessary in this case as where the sash is hung at the top or bottom.

Q. Does it make any difference in the principle of the Wollensak patent whether the same is placed in a perpendicular position or a horizontal one, in its connection with and the action of a transom?

A. The effect and operation would be different, and if placed horizontally the rod would be out of reach and might as well be omitted altogether.

Q. In what would its operation differ so far as the operating of the rod was concerned and the opening of the sash?

A. The sash in that case would have to swing horizontally, like a French window, and none of its weight would come on the rod.

Q. Would it or not open the transom in the same way precisely as it would if the lifter was placed in a perpendicular position?

A. Not exactly. In the perpendicular position, when the transom is hinged at the top or bottom, the device operates either to raise it against its own weight or to let it drop and sustain its weight, whilst when handled horizontally the weight is entirely sustained by the hinges, and the friction only has to be overcome. When handled vertically the weight of the transom either assists or acts against the friction.

91 Q. State if the operation of the Wollensak lifter would not be precisely the same if placed in a horizontal position, in connection with a transom, as it would if placed in an upright position, as shown in the door there. (Referring to door.)

A. No; I think not, for the seasons already given.

Q. Would it not operate as well, placed and operated in a horizontal position as in a perpendicular?

A. Probably it would: I assume the whole device to be horizontal, and the sash to open horizontally; except that a person of ordinary stature could not reach it.

Q. Would it not depend upon how high it was placed above the floor?

A. I assume it to be over a door, which is ordinarily high enough to let a tall man go through without stooping.

Q. What is the object of the operating rods running below the lower guide in the Wollensak patent?

A. So that it will play in the guides.

Q. Is it not brought below, within reach of a person, so that they can open the transom; is not that one of its objects?

A. The guide is low enough for a person to reach it.

Q. Does not the length of the operating rod depend upon the distance from the floor at which the transom is placed?

A. Certainly.

Q. Then has not the operating rod some other object than simply passing through a guide to hold the transom in place?

A. Its object is to enable a person to operate the transom without the use of a step-ladder or climbing on a chair or table.

Q. Do balanced sashes require anything to hold them in place when open where sashes are fastened in the center, opening outwardly and inwardly, if they are evenly balanced?

A. If they were evenly balanced they would not, but it is impossible to exactly balance them.

Q. Does it make any difference as to the object of the upper guide, as to its effect, what kind of force you are obliged to overcome in opening the sash or operating the rod?

92 A. The direction of the force makes the difference, also the degree; the prime cause of the force is not of so much importance.

Q. Would the effect of a strong wind, a draught of wind, blowing against the transom window tend to make it necessary for the existence of the upper guide to prevent the bending of the operating rod?

A. I think not, as the wind never has sufficient force on such an inclined surface, and when the transom is closed it presents a flat surface to the wind, and there is no strain on the rod.

Q. If the sash was partially open and a strong current of wind was blowing squarely against it, would it not have a tendency to bend the rod if it was without an upper guide?

A. I don't believe I get your meaning, for such a condition, in practice, would be impossible, as the wind would have to act in a vertical direction in order to blow squarely against an open transom.

Q. What part of the Bayley & McCluskey patent is used in opening and closing the ventilators in cars?

A. There is a hand lever moving on a pivot and acting through sliding bars and connecting links.

Q. In the absence of the hand bar what rod is used in opening the ventilators or windows in cars, in the Bayley & McCluskey patent?

A. The device is not intended to be used without the hand lever.

Q. Could it not be operated if one was in a position to reach the end of the rod, just as effectually as with the lever?

A. Yes; but the device is intended to be placed too high to be reached without the lever.

Q. Does not that part of the Bayley & McClusky patent which

you call the sliding bar operate precisely like the operating rod in Wollensak's patent, excepting that one is perpendicular in position and the other is horizontal?

A. If you also except the differences already pointed out, due to this difference of position, it does.

Q. Do not the arms connecting with what you call the
93 sliding bar, connecting with the sash in ventilators, operate in precisely the same way as the lifting arm in the Wollensak patent, so far as opening and closing the ventilators or windows are concerned?

A. With the same exceptions, it does.

Q. Is not what you term the link in the Bayley & McCluskey patent precisely precisely what is termed the lifting arm in the Wollensak patent, as to its functions of opening and closing the sash?

A. With the exceptions already mentioned I should say they were similar.

Q. Is the sash or are the ventilators of the Bayley & McCluskey patent opened or closed by any other means than by the movement of the rod, or what you term sliding bar?

A. Except the hand lever; I believe not.

Q. You state, in answer to a question by solicitors for complainant, that there is no lifting arm and operating rod for opening the transom window, or for any other purpose, in the Bayley and McCluskey patent. Now, do you wish to be understood that what you term the sliding bar is not an operating rod, to the extent that by its movements the ventilators are opened and closed?

A. No; I mean that it is not an operating rod in the sense of the Wollensak patent. The main object of the Wollensak operating rod is to bring the transom within the control of the person on the floor by extending down within his reach, and this is done in the Bayley & McCluskey by the hand lever, and the additional function of securing the transom in any position and of sustaining its weight in the Wollensak patent is also not found in this sliding bar in the Bayley & McCluskey. The sole object of this sliding bar is to connect a series of windows together, and to the hand lever, and enable them to be operated at once.

Q. Would not that be done in principle in the Bayley & McCluskey patent if it was so constructed as to apply to only one window or ventilator in a car instead of a series of windows?

94 A. So far as the mere act of opening that one window is concerned there would not be, but in such a case the bar would probably be omitted altogether, and the connecting link attached directly to the hand lever, which could be done and make a device that would operate just as well as the one shown in the patent.

Q. Is there not a guide at the end of what you term the sliding bar beyond or above the point of junction of the link connecting the sliding bar with the last of the series of windows or ventilators, through which the sliding bar passes, and which holds it in its place?

A. There is a sort of guide or strap over the bar at that point,

which, however, cannot be said to be above the point of junction, and which is intended to separate the bar and prevent its falling.

Q. If in operating the sliding bar in the Bayley & McCluskey patent, in opening and closing the ventilator or ventilators, they should stick, or it was found difficult to open them, would it not be necessary to apply considerable force to the sliding bar in order to open them in the same manner, as you say force would be necessary in opening the transom with the Wollensak lever if they were tight in their frames or should stick?

A. It would be necessary to apply force in either case, but this force is not applied in just the same manner.

Q. If by reason of the ventilators being wet and damp they should stick in their places in endeavoring to open them by the Bayley & McCluskey device, would the application of a force to the sliding bar for that purpose have a tendency to bend the bar or rod, unless the same was separated by a guide?

A. I have not the patent before me, but as I remember there is a direct tension on the bar to open the ventilators, so that the tendency to bend would be very slight.

Q. If it was necessary to overcome a large amount of force in opening these ventilators by reason of their getting tight in their place, would there not be a tendency to bend the bar on such opening unless it was held in place by guides?

95 A. Not if the bar is strained in tension; the tendency would be to bend the connecting link.

Q. Do you pretend to say that the strain in opening the ventilator in the Bayley & McCluskey patent, the strain on the link and sliding bar, would be any different than what it would be in operating the rod and lifting arm in the Wollensak patent, if an equal amount of force was applied to the operating rod or sliding bar to open a window, the sliding bar and the rod being of equal size and the guides at equal distances on the bar or operating rod?

A. It would depend somewhat on the arrangement; if they both opened by a pull on the sliding member, then the difference would come in closing them, and the Wollensak would have to overcome the resistance due to the weight of the transom and the Bayley & McCluskey would not.

Q. The question was, in a case where the same amount of force would be applied to the operating rod, or to what you term the sliding bar, not as to what you have stated as to the sash or transom, but simply as to the force to be overcome being equal in each instance, please state if in that view the operation would be different in one device than in the other?

A. If the force transmitted through the lifting arm of one and the connecting link of the other one is the same in amount and direction, then the strain on the operating rod or sliding bar would be the same.

Q. What is the object of a transom window?

A. I believe it is used as a ventilator.

Q. What is the object of a ventilator in a car as referred to in the Bayley & McCluskey patent?

A. I believe that also is for ventilation.

Q. What is the object of the device of Bayley & McCluskey in their patent, if it is not to open and close the transom?

A. It is to open and close a series of ventilators, all at once instead of one at a time.

95½ Q. If there was but one ventilator in in the center of the car which they desired to reach, what would be its object then more than to open that one ventilator?

A. In that case I should think the device would be useless, as it would be easier to open the ventilator with a stick.

Q. What is the object of the Wollensak lifter but to open the sash and keep it in its place?

A. It is to enable a person to do this conveniently; in other words, to bring the transom within the reach of a person on the floor, as well as to hold it open.

Q. Does the question of bringing it within the reach of a person on the floor have anything to do with the patent of Mr. Wollensak, that part which he claims as patented by him?

A. Certainly; that is the object of the whole device.

Q. Are you not aware that Mr. Wollensak does not claim in his patent, as a principle, that of the operating rod nor lifting arm, but simply that prolongation of the operating rod above the point of juncture of the lifting road and guide above that point?

A. He claims the combination which goes to form a perfect device for enabling a person on the floor to operate the transom; a device which did not exist before in as perfect a form. I am perfectly aware that he does not claim the operating rod or lifting arm separately, but I am not aware that he is limited to a simple prolongation of the operating rod or lifting arm, as assumed in the last part of your question.

Q. Could not a transom be opened and closed by persons standing on the floor under the devices as used prior to Mr. Wollensak's invention?

A. Certainly, so far as I am familiar with that device.

Q. You state in answer to a question, in the direct examination, that there was no guide for the upper end of the operating rod in the Bayley & McCluskey patent; what did you mean by that?

A. I presume I said that there was no guide for the upper end of an operating rod in this patent, and there is none.

96 Q. What do you call the operating rod in the Bayley & McCluskey patent?

A. There is no operating rod, in the sense of the Wollensak patent.

Q. What did you mean when you said that there was no guide at the upper end of the operating rod; what did you refer to?

A. If I used that language, I meant to say that there was no guide to the upper end of an operating rod, for the reason that there is no guide in the patent for the upper end of anything, and there is no operating rod with an upper end, and no operating rod at all, in the sense of the Wollensak patent, and I presume the stenographer used the article "the" instead of "an" by mistake.

Q. Are not the transoms in cars opened and closed by the Bayley & McCluskey device, directly through the means of what you term the sliding bars, in the absence of the lever?

A. Assuming the windows to be transoms, which they are not, it is impossible to say, for the reason that the device was not invented to be used without the lever; and I cannot tell in what shape the patentees would have applied it if they had omitted the lever. The windows, however, are opened through the medium of the sliding bar and its connections.

Q. Do you pretend to say that there is no guide on the sliding bar at the extreme end of the sliding bar—the end opposite to its connection with the lever—which guide is beyond and nearer the end of the sliding bar than the link which is connected with the ventilator?

A. There is a guide between the link connection of the last window shown on the end of the bar. There are several such guides or supports shown in the drawing, placed at intervals, but, judging from their position with reference to the first window, they were not intended to guide the bar against a strain transmitted through the link, but simply to support it at intervals against its own weight.

Q. In case there were no guides on the sliding bar in the Bayley & McCluskey patent, aside from the one at the end of the
97 sliding bar which it connects with the lever, what would be the effect on the sliding bar if the ventilator frames should stick in their places, or a free and easy movement should be obstructed from any cause, in endeavoring to open them with the sliding bar?

A. There would be a tendency to bend the bar, but, as it would bend down from its own weight, it would be of little consequence whether the windows stuck or not.

Q. Would not the guides, through which the sliding rod passes, in the Bayley & McCluskey patent, perform not only the office of holding it in its place when the ventilators are closed or at rest, but also of meeting the resistance which is caused by opening and closing the ventilators?

A. Yes.

Q. Do the guides in the Wollensak patent perform any other office than to hold the operating rod in place; that is, the guides below the juncture of the lifting arm or operating rod?

A. If you mean the lower guide, it has the additional function of a fastener or lock, but, considered as guides, that is its purpose which you have named.

Q. You stated that in the Wollensak device the guides are not necessary to support the bar or lifting rod; that it is hung in position without them; what do you mean by that?

A. Just what I say; that the guides are not necessary to support the operating rod against its own weight.

Q. Do you pretend to say that the operating rod would remain in the same position that it does, without passing through the guides?

A. It would hang down by the side of the door.

Q. In the same position as with the guides?

A. It would hang down by the side of the door, so as to be operated, though it might change its position.

Q. Do you pretend to say that you could operate the Wollensak operating rod, if it were not for the guides below the point of junction?

A. Yes, sir.

Q. You say that in the Bayley & McCluskey the transom lifter, the object of it is different from the Wollensak. I want to know
98 if it is not a fact that both these devices are for the purpose of opening windows for purposes of ventilation; by windows, I mean a sash with glass or otherwise.

A. Yes, sir.

Q. You say that there is a difference; that these two devices of Bayley & McCluskey and Wollensak are for different purposes; if you did say they are for different purposes, why do you now say they are for the same?

A. The object of Wollensak's invention was different from anything that is accomplished in Bayley & McCluskey's device, though the general principle of both devices, considered as a whole—that is to say, of the transom lifter to which the Wollensak invention is applied and of the device shown in the Bayley & McCluskey patent—is to open windows, as previously stated.

Q. Does it make any difference in principle whether the device is or used to open windows in cars, or windows in a room in a house or over a door?

A. Provided they are of the same construction, operated in the same way, and accomplish the same purpose, it does not.

Q. Is the principle changed by simply changing the position in which the windows are placed, or the direction in which they are opened, or the position in which the lifter is placed in connection with the sash, or any other changes in its construction, excepting to adapt it to a different position?

A. That very adaptation might, in this case does, require considerable invention to effect, and, considered aside from this, supposing the two devices to be in all respects the same, the differences of position involve differences in the conditions of use.

Whereupon the further examination of witnesses in this case was adjourned to 2 o'clock p. m. of July 13, 1881, at which time a further adjournment was had until 10 o'clock a. m. of July 14th, 1881. July 14, 1881, adjourned by agreement to July 25, 1881.

99 JULY 25, 1881.

JOHN F. WOLLENSAK, being first duly sworn, testified as follows, in answer to interrogatories propounded by EPHRAIM BANNING, Esq.:

Q. State your name, age, occupation, and place of residence.

A. My name is John F. Wollensak; I was born Sept. 6th, 1846; occupation, manufacturer of hardware specialties; reside at 362 North La Salle street.

Q. Are you the complainant in this case?

A. I am.

Q. Are you the inventor of the improvement in transom lifters described and claimed in the reissued letters patent issued to you upon which this suit is brought?

A. I am, so far as I know.

Q. Have you in any way heard of the use of such transom lifters before the date of your invention claimed in this patent?

A. I never did hear of any; in fact, I believe that I was the first man in the world that made a transom lifter as described.

Q. Are you engaged in manufacturing and selling these patent transom lifters, and how long have you been so engaged?

A. It is my special business now manufacturing these transom lifters; I have been manufacturing them ever since the fall of 1872 for the benefit of the public.

Q. State fully what efforts you made to introduce this invention to the public either before or after the procuring of your patent.

A. Well, I introduced them by sending out circulars and models, and by advertising them in the trade papers, newspapers, and by pamphlets, books, and so on. I sent men out on the road to introduce them; I put out a great many models, and consigned them to cities, and did everything else that suggested itself, with a view of introducing the goods and putting them on the market; I presume that I sent out as many as 500 models; that does not include the actual lifters that I sent out as samples, which were sent out gratuitously; I spent a great deal of money in advertising; in some instances I paid as high as $300 for a single insertion in a catalogue; I do not know how much I spent, but it reaches far into the thousands of dollars; the goods are known all over this country and Canada, as well as foreign countries, to-day. The models ranged in price all the way from $3 up to $65 each; I have established agencies in all the principal points in the United States, and they are now carrying a stock of my transom lifters; I have agents at New York, Philadelphia, and St. Louis, besides headquarters in other large cities; by headquarters I mean one house in each of these large cities that carry a stock of transom lifters, and who get a special price, the object being to make it an object or an inducement for them to introduce the goods and push them.

Q. Have you also a trade in foreign countries in these transom lifters?

A. Yes, sir; some of the goods have been shipped to Australia, London, China, and the Hawaiian Islands.

Q. You say that you commenced the manufacture of these transom lifters in 1872?

A. Yes.

Q. Have you been constantly in that business since then?

A. Yes; that has been my principal business.

Q. How much have you got invested in this business, approximately?

A. I should say at least twenty thousand dollars.

Q. Have you been in the position all the time to supply all the demands of the trade?

A. I have always been in a position to supply all orders—ordinary orders—without delay; I never had any complaint as to delays.

Q. Have you been in a position that you would have been able constantly and promptly to supply the demands of the trade if you had had the exclusive control of this business, so far as you know?

A. I have always been in a position, and am now, to make ten times as many as the trade called for.

101 Q. How large is your trade at the present time, and is there a large demand for these goods?

A. The sales are now several hundred per week, and the demand seems to be increasing all the while, and the increase has been a steady one all the while since I commenced to make the transom lifters.

Q. State when you first conceived the idea of this invention, and what efforts you afterwards made to reduce it to a practical shape.

A. My first efforts were made in the spring of 1866. I then made a device that I cannot accurately describe just now, but, as near as I can remember, it was the same as that described as being old in my patents; and I applied it to a show-case door hinged at the top, that used to be in my room. Subsequently, and during the same year, I made a model door and transom, being in part made out of a cigar box, the lifting device being made substantially the same as that described in my patent, but differing somewhat in the construction. Instead of passing the upper guide over the rod—that is, the lifting rod—I slotted that portion of the rod, and held the rod in place with a screw; the slot allowed the rod to pass up and down freely, the screw acting as a guide and support for the upper end of the lifting rod, and also, instead of a set screw, as we use now, for the purpose of holding the transom in its position at any place desired, I also slotted the lower portion of the lifting rod, and used a similar screw as described for the upper portion, for the purpose of holding the rod in place and guiding it, and drilled holes through the rod sidewise of the slot, and used a pin through the holes for the purpose of holding the rod in position—the rod being made square instead of round. I do not remember whether I used a chain at the time for holding the little pin from being misplaced or lost, or whether it was a cord—I believe it was one or the other—but with this exception the model was as near like the model I now have in my hand as I can remember. The model I now have in my hand was made July 22, 1881, from memory, and was made by me.

102 Q. On what was your first device applied before the making of your first model?

A. The room mentioned, wherein the first device was applied to a show case, was then used by me as a museum, where I kept all sorts of curiosities and relics, the show case being used for such curiosities and relics. The show case was originally made with sliding doors, and was reconstructed and changed so that the doors were hinged at the top, and this device was applied for the purpose of raising and lowering it and holding it in position. These were my first efforts, although prior to that time I had many inquiries

for something of that kind. This occurred to me then as being a good thing for the purpose of raising transoms, and the result was the making of a model in the same year.

Q. The first device applied to a show case did not have any upper guide?

A. As near as I can remember, it did not, being made of wood almost wholly.

Q. Did its use suggest the necessity of an upper guide or not?

A. It did.

Q. And was it that suggestion or necessity that led you to make the upper guide in the model of the same year?

A. It was.

Q. Do you remember when you first started that museum to which you have referred, and how long you kept it up?

A. I started the museum about the middle of May, 1866. I took the room the first of May, but it was along about the middle before I moved in and fitted it up. The museum was abandoned when father moved away from that house. What I mean by abandoned is that the contents of the museum were moved when father moved, and were stored, and it was never put on exhibition or the museum kept up after that, but was moved several times from house to house, and was finally burned up in the great fire. I think I have a few of the contents of the museum left yet, such as shells, and there may be a few old books; I do not remember just what there is left, but I have a few pieces left.

103 Q. With whom were you living at that time and where?

A. I was living with my father, on White street, at the corner of Sedgwick street, in this city.

Q. Do you remember when your father moved to that house, and how long he remained there?

A. He moved there in May, 1865, and remained there two years.

Q. How do you know he was living there in 1865?

A. I locate the date in this way, that my sister Emma was born a few days after we moved in that house, and she was 16 years old last May.

Q. Are you certain that you made that model while living at that house?

A. Yes.

Q. Are you also certain that you never kept up that museum or had such museum after you left that house?

A. I am certain the museum was abandoned when we moved away from that house, in the way I have stated.

Q. State when you first went into business for yourself, and with whom.

A. I went into business in the spring of 1867—it was in April, as near as I can remember or find out—with Samuel Salzer, of this city. He furnished the money, and his brother acted in his place; we were then at locksmithing and repairing, at 120 E. Randolph street.

Q. Did you make the model referred to before the formation of that partnership?

A. Yes. Mr. Salzer and myself bought the business of my father,

and it was my intention to have the thing patented at that time, and to manufacture the transom lifters; but subsequently I concluded that my acting partner was not a suitable man for me to continue in business with indefinitely. That was one reason why I did not apply for a patent at that time, although I was informed that I could not obtain a patent until I became of age.

Q. How did you come to be so informed, and by whom, if you recollect?

A. I do not recollect by whom it was; but, if my memory serves me right, it was by some party on Dearborn street, near Randolph, up stairs. I was fitting a key to his desk, and I saw he was a
104 lawyer, and I asked him whether he did that kind of business, and he said he did, and I was then informed that I could not get a patent until I became of age.

Q. How did you come to speak about the matter?

A. I was at that time thinking about getting out a patent, it was on my mind. This was after the model was made.

Q. What did you afterwards do with that model; what became of it?

A. Well, the model was made by me secretly; no one knew about it, and it was hidden in the shop, and was burned up in the fire of 1871.

Q. Did you ever show it to any one, or tell any one about it?

A. I did not.

Q. This model, made from a part of a cigar box, which you have produced here, is as nearly like the one made in 1866 as it is possible to make it from recollection, with the exceptions named in one of your previous answers, as I understand you?

A. Yes, sir.

Q. The defendant's answer states that one Geo. Wheeldon made this invention, and that you, in some way, got it from him and procured a patent; is that true or not?

A. It is false.

Q. Did Mr. Wheeldon have anything to do with the making of this invention?

A. Nothing whatever.

Q. Was he ever in your employ subsequent to the issuing of your patent?

A. He was. I should say, from memory, that he was in my employ about two years after that, and some time before.

Q. Did he sell these transom lifters for you?

A. He did.

Q. Under whose name did he sell them?

A. Under my name, as Wollensak's transom lifters.

Q. Did he procure any certificates from architects or others for you in reference to them?

A. If you mean testimonials, I would say that when I first got out a circular for general distribution, he did assist in getting testimonials from architects and others as to the merits of the invention, which were inserted in the circular.

105 Q. Did he know you to be the patentee, in your own name, of these transom lifters?

A. Yes, sir.

Q. He made sales and afterwards procured testimonials for you, knowing this fact?

A. Yes.

Q. When did you first learn that anybody claimed that he made this invention, or had anything to do with it?

A. The first intimation that I had was after this suit was commenced, and at the time that we were applying for an injunction in this case. It was on the morning that the argument was to be held that he called at my store, and said that he was out of funds, and that unless I would assist him with money that he would make affidavit stating that he was the inventor. I immediately ordered him out of the store, and he, on going out, threatened to give me trouble all he could, and he subsequently did, by making an affidavit to the fact that he was the first inventor, and that I stole it from him.

Q. When did you first meet Mr. Ellsworth, who solicited your patent?

A. The firm name was Hill and Ellsworth, or Ellsworth & Spear, I have forgotten which. I first met Mr. Ellsworth in March, 1870.

Q. Did you have your model, and did you contemplate applying for a patent at that time?

A. I had the model at that time, and remember the circumstance in this way: I was called as a witness in an interference case, and Mr. Ellsworth being one of the counsel in that case, I rather liked his appearance and manner of conducting the case, and concluded then to try and get him as soon as I was ready to apply for a patent.

Q. When did you talk with Ellsworth about applying for a patent?

A. It was some time in the summer or early in the spring of 1872.

Q. Why did you not sooner apply for a patent?

A. I have stated that my partner at the time of making this model was not a suitable man to continue with, and I believed that if I applied for a patent at that time, that he would, by the
106 terms of our agreement, become part owner. After we dissolved, which was in the spring of 1869, I was short of funds, on account of having to buy him out, and not long after that the fire came along and burned up everything I had. After the fire, I took another partner and soon learned that he was not a suitable man for me; and for these reasons did not deem it wise to apply for a patent earlier. But immediately, almost, on the dissolution of my second partnership, I made preparations to, and did, apply for a patent.

Counsel for complainant now offers in evidence the cigar box model referred to by the witness, and marks the same "Complainant's Exhibit Wollensak 1st Model."

JULY 26TH, 1881.

Parties present, as before.

Mr. Tourtellotte, not being present at the direct examination of John A. Wollensak, and being present now, it is hereby stipulated that he may now object to the testimony of the two witnesses whose testimony was taken yesterday (that of John F. Wollensak and John Wollensak).

Mr. TOURTELLOTTE: I object to the testimony of John F. Wollensak, on the ground that the testimony is not in rebuttal of any testimony offered by the defendant, but is entirely new matter, and should have been offered, if at all, at an earlier day, and before the defendant was called upon to produce his testimony.

The testimony of John Wollensak, the father of the complainant, is also objected to, for the same reason. The questions, each and all of them, are objected to, as being leading, and as being improper and immaterial.

Cross-examination of JOHN F. WOLLENSAK:

Q. Where did you live in May, 1866?

A. At the corner of White and Sedgwick streets.

107 Q. How old were you then?

A. I was not quite 20 years old.

Q. How old were you then?

A. At what date?

Q. In May, 1866, I said.

A. About 19 years and 8 months.

Q. What had you been doing up to that time since you were old enough to do anything?

A. I worked in a cigar factory, in a broom factory, and in a lock factory, and on a farm.

Q. How long had you worked in a lock factory?

A. I presume up to that time I had had some four or five years' experience.

Q. 4 or 5 years at the age of 19?

A. Yes.

Q. Where?

A. At Milwaukee, Wisconsin, Chicago, and Memphis, Tenn.

Q. How long had you been in Milwaukee during that time?

A I think I resided there about one year.

Q. How long in Memphis?

A. One year.

Q. How long in Chicago?

A. Up to that time, sir, about 5 years, with the exception of the year that I was in Memphis.

Q. With whom did you live during that time?

A. Father.

Q. With whom did you work?

A. In Chicago?

Q. Yes.

A. Part of the time with father; part of the time with John W.

Newell, the locksmith; part of the time at a broom factory on the West Side—in a broom factory of a man whose name I do not recollect, but it was near Aberdeen street.

Q. You speak of starting a museum; when did you start that?

A. I started it some time in May—about May 1st, 1866.

Q. Where?

A. At the corner of White street.

Q. In what building?

A. The building we were living in.

Q. What room in the building?

A. It was about the center of the building.

108 Q. What kind of a room was it; was it a bed-room or was it a larger room?

A. It was used for a bed-room, but was facing the street.

Q. Was it not a small closet?

A. It was a regular room; large enough for a bed-room; there was a closet back of that in which I cut a hole.

Q. What did you have in that museum?

A. Stuffed birds, books, and minerals of all kinds.

Q. What minerals did you have in there?

A. As near as I can describe the specimens, there were lead and copper ore, and such as that.

Q. What do you mean by "such as that"?

A. I presume that every one knows what lead ore is.

Q. Tell what ores you had besides lead?

A. Copper.

Q. What besides that?

A. Some that I could not describe, but they were minerals.

Q. What was the nature of the mineral?

A. Some were lead and some were copper.

Q. Did you have anything else besides lead and copper?

A. Some, I presume, contained silver and antimony.

Q. Did you have anything else?

A. I have said that I had stuffed birds and books, and I had some Indian implements.

Q. What books did you have?

A. It would be impossible for me to name them now.

Q. Can you give the names of any of the books that you had?

A. Some were histories and some were novels, and I presume that I had some 30 volumes; but I cannot name them now.

Q. What else besides those 30 volumes of books that you speak of?

A. I think that will pretty well cover it.

Q. You have stated now all that you remember that you had in the museum; what Indian implements did you have?

A. Wooden knives.

Q. What else?

A. Bludgeons and moccasins.

Q. What else?

A. Leggings and bows and arrows.

109 Q. Were they really Indian implements?
A. I presume so; I bought them at the great fair which was held during the war.
Q. What fair was it?
A. The Sanitary fair.
Q. Where was it?
A. I think it was held in Chicago, on Dearborn Park.
Q. Did you buy them all at one time?
A. No, sir; I did not.
Q. How was that?
A. Some of them were donated.
Q. Who donated them?
A. Some of my friends.
Q. Who were the friends that donated them—for instance the moccasins?
A. I do not remember what part of them were donated.
Q. You gave a list of all the implements that you had?
A. All that I remember.
Q. Can you remember who donated them?
A. No; I cannot now.
Q. Can you tell which ones you purchased at the great Sanitary fair?
A. I could not; I know that I purchased the most of them.
Q. If you purchased most all, then there were not many given to you by friends?
A. Very few.
Q. But you cannot tell what they gave you?
A. No; I could not now.
Q. This museum consisted of 30 volumes of books, Indian implements, and then a few specimens of copper and antimony?
A. That is all that I can now remember.
Q. Can you think of anything else that you had?
A. I had some bones of a shark fish.
Q. What kind?
A. A jaw-bone, for instance.
Q. What kind of a jaw-bone was it?
A. It was part of the head.
Q. Where did you get it?
A. Really, I cannot remember; there were so many things; I picked them up all over.
Q. Did you get it at the Sanitary fair?
A. I do not think I did.
110 Q. Do you know what you paid for any of these specimens?
A. No, sir; I paid the money for them.
Q. Those given to you, you did not pay money for, did you?
A. No.
Q. Those minerals did you pay for?
A. I do not think I bought them.
Q. Who donated them to you?
A. I do not remember now.

Q. Who donated the books to you?
A. Some school friends.
Q. Can you give the name of a single school friend that gave you a book or books?
A. I do not remember who donated the books.
Q. Who paid for them?
A. They were donated.
Q. What books were donated to you out of the vast quantity of 30 volumes?
A. I said that I could not remember what school friends donated them to me.
Q. During what years did you get these books from school friends?
A. My books were accumulations.
Q. Were you attending school at the time the books were donated?
A. No, sir.
Q. How long had it been since you had been attending school prior to this May, 1866?
A. I went to school at Albany, N. Y.
Q. How long since you had been attending school prior to this May, 1866?
A. About three years.
Q. How long did you attend school at Albany, N. Y?
A. As near as I can remember, about 3 years.
Q. What school friends in Albany gave you these books?
A. I attended school near Watertown, Wisconsin, about one year, if I remember right; and there it was, I can remember distinctly now, it was that. I was presented with two books.
Q. What were they?
A. I could not tell the name of the books now.

Q. Was the donation made in the school room or out of
111 the school room?

A. I think they were made at my uncle's house with whom I was then living.
Q. Who was your uncle?
A. Charles Wollensak.
Q. Do you know who made the donation?
A. His name was Wilcox.
Q. The donation was made in the school room, then?
A. I would not be positive.
Q. You did not donate these books yourself?
A. Those that I refer to now were not donated by myself.
Q. Can you tell what was the subject-matter of these books?
A. They were light reading matter, but I do not know the names now.
Q. Was it Jack the Giant Killer, or something of that kind?
A. It was not quite so wild a story as that.
Q. It was something gentle; something soothing to the spirit?
A. Possibly.
Q. Wasn't it the Mother Goose Melodies?
A. No.
Q. Works of like character to that?

A. Yes, sir.

Q. This museum you say was established in 1866; how much space was occupied in this room; how much room was occupied in setting it up?

A. The room was about 10 by 15, I should judge. It might have been 12 by 12, or such a matter.

Q. How long did your father live at that place.

A. At the corner of White and Sedgwick, 2 years.

Q. What became of the museum after you moved away?

A. The contents of the museum were stored in the house that he moved to when he left there.

Q. Where were the things stored?

A. In the various rooms.

Q. In what; were they in boxes?

A. I presume in boxes and in the show cases.

Q. How many show cases were necessary to keep 30 books and 3 or 4 specimens of minerals, a few Indian implements bought
112 at the sanitary fair, and the jaw-bone of a shark?

A. I do not believe that I stated that there — 3 or 4 minerals; there were a great many more than that.

Q. What more than that did you have, then?

A. I had more pieces.

Q. Was there more pieces of bow and arrow than one?

A. Your question was how many cases was necessary to hold 3 or 4 pieces of minerals, a shark's jaw, and so on.

Q. Well, how many would it take?

A. In the first place I did not keep the shark's head in a show case.

Q. What did you keep in the show case, then?

A. The minerals and a glass ship that I now think of.

Q. Where did you get it?

A. I presume that I bought it from a glass blower.

Q. Where did you get it?

A. I do not know where I got it.

Q. Did you buy it in Albany?

A. No; somewhere in Chicago.

Q. When did you get that?

A. About that time.

Q. What time was it?

A. The time that I was fitting up the museum.

Q. This museum was simply a collection of toys that you had collected?

A. It was more than simply toys.

Q. What was there?

A. I have mentioned a great many articles.

Q. Don't you consider such a collection a mere collection of toys for boys?

A. I think there were some real curiosities.

Q. What were they, then?

A. Those things that I have mentioned.

Q. What?

A. The Indian implements.
Q. Were they not such things as a boy would have?
A. I never before saw them exhibited in that way.
Q. Where did you see them exhibited?
A. I do not know that I saw them exhibited before I saw them in this fair.
Q. What part of Wisconsin did you live in when these articles were given to you?
A. I lived at Watertown on a farm, and also in Milwaukee.
113 Q. Had you never seen Indian implements before you saw them in the sanitary fair?
A. I had seen Indians carrying them, but never saw them on exhibition.
Q. Had you not been to a sanitary fair or real show before that time?
A. I do not think I had; I do not think I went to a theater or a circus until about that time.
Q. When you left that house it became one of the things of the past; I mean the museum?
A. We moved out of that house two years after we moved in.
Q. You had no museum prior to that time when you went into that house in May, 1866?
A. Not that I called a museum; I always had odds and ends.
Q. What kind of odds and ends?
A. Prior to that time I had in my bed-room a workshop, where I had a vice and lathe and tools.
Q. Did you have any other things in the room besides that?
A. I had the usual things.
Q. Was that the only vice that you had in the bed-room?
A. I may have had some other vice there.
Q. Did you ever have your museum on exhibition?
A. I used to take my friends in there and entertain them.
Q. What friends did you ever take in there?
A. Well, there was a family by the name of Periolat.
Q. The man that is famous in this city as the friend of the county commissioners?
A. No, it was a much younger man; we had neighbors by the name of Everhardt that I took in there.
Q. Who is he?
A. A son of the merchant tailor.
Q. Where does he live?
A. I do not know.
Q. Where did he ever live?
A. At that time he lived on North Wells street.
Q. He was only a boy?
A. Not very young.
Q. You took him in and showed him your traps?
A. Yes.
Q. They were stored on the shelf?
A. What do you mean?
Q. Those articles of *virtu?*

114 A. Some of them were hung on the wall, and some were in show cases and others scattered around.

Q. What kind of a show case was it?

A. I think I had three all together; they were made of pine.

Q. Were they sitttng on tables or fastened to the wall?

A. All fastened to the wall.

Q. Were they on all sides of the room, or simply on one side?

A. If I remember right there were two on the east side of the room and one on the west side of the room.

Q. Have you now given all that you now remember of having in that museum?

A. All that I can now think of.

Q. Where is Samuel Salzer now living?

A. He resides in Chicago.

Q. Where?

A. I believe that he resides on Indiana street.

Q. Where?

A. Near La Salle street.

Q. How long were you in business with Salzer?

A. About two years.

Q. Where at?

A. 120 East Randolph street.

Q. What was the lawyer's name that advised you that you could not get a patent?

A. I think he said, but I do not remember his name.

Q. Where was his office?

A. I do not remember distinct enough to state, but it was on Dearborn street, near Randolph.

Q. Did you have any extended conversation with him?

A. I presume that it did not last over five minutes.

Q. You do not know whether he had studied patent law?

A. I took it for granted that he had.

Q. Did you know anything about it?

A. No; I never saw him before, I think.

Q. Did you ever say anything else to any one else as to whether you could get a patent before you were 21?

A. I do not think that I did.

Q. Were you engaged in business at the time you spoke to this lawyer on the subject—I mean for yourself?

A. Yes; with Salzer.

115 Q. What were you doing in May, 1866, and during the balance of the year?

A. I was working for my father.

Q. Where?

A. At 120 Randolph street.

Q. Did you work for him the balance of that year?

A. I worked for father until Salzer and myself bought out my father's business.

Q. How long did you continue in business with Salzer after you bought out your father?

A. About two years.

Q. Where at?
A. 120 East Randolph street.
Q. Where is your father now?
A. In the city.
Q. What is he doing?
A. Well, he is in my employ.
Q. What does he receive as wages?
A. $10 per week, whether he works or not.
Q. You say that your partner was not a suitable man to continue business with when you made this (referring to model); now will you please state what was the matter with him?
A. I do not think I said that.
Q. You said that he was not a suitable man; in what was he not suitable?
A. I said that my reasons for not applying for a patent was that my partner was not a suitable man for me to continue with indefinitely.
Q. You have said in your direct examination that your partner at the time of making this model was not a suitable man to continue with.
A. I meant that he was not a suitable man for me to continue with indefinitely.
Q. What was the matter with him that you did not want to continue with him?
A. He was absolutely incompetent.
Q. In what respects?
A. He had no taste for the business and neglected it.
Q. Where does he live now?
A. I stated that my actual partner had placed his brother in with me to act as partner, and this brother of the actual partner is now living in the country.
Q. Where?
A. I cannot tell.
Q. Do you presume to say you do not know where he is now?
A. I have heard of him, but it was three or four months ago.
116 Q. You cannot name the place?
A. I cannot think of the place. It was some small town.
Q. Was it in the vicinity of Chicago?
A. I should judge that it was not more than a hundred miles.
Q. Do you pretend to say that you do not know where he lives?
A. He told me where he lives, and I think I have written to him, but the name is an odd one, and I cannot think of it just now.

Mr. BANNING: Complainant's counsel will inform defendant's counsel where the man lives.

Q. In what case were you called as witness in which Ellsworth was engaged as counsel?
A. I think the plaintiff in the case was Mr. Fishback, now residing in the city; the other side I do not know the name of.
Q. What was the subject-matter of that suit?
A. It was the frame of a traveling bag.

Q. Will you swear that the exhibit marked "Complainant's Exhibit Wollensak's First Model" was made by you in this shape in 1866?

A. As near as I can remember, it was substantially.

Q. Will you swear positively that it was so?

A. Yes.

Q. Why do you say as near as you can remember?

A. Because it is made from memory.

Q. You have not seen one or had one since 1866?

A. I presume that I saw it after that.

Q. How long after that was it?

A. I may have seen it just previous to the fire.

Q. Do you say that you did just previous to the fire?

A. Yes.

Q. Where?

A. In my place of business.

Q. What place of business?

A. 120 Randolph street.

Q. What year did you see it there?

A. Well, to be positive, I would say in 1870, and I think I saw it afterwards.

Q. To what was it applied when constructed by you?

A. Lifting device.

Q. To what was it applied when constructed by you?

A. A cigar box.

117 Q. Anything else but a cigar box?

A. I do not think it was.

Q. Was it left in your museum?

A. It never was there.

Q. Never was applied to anything but a cigar box?

A. The device that was on the model never was.

Q. You never showed it to any one; you are positive of that?

A. I am positive that I did not.

Q. Was it packed in your trunk with the balance of your things—the 30 books and the 3 or 4 minerals?

A. I said that it never was in the museum; I always kept it in my place of business.

Q. Where was your place of business at the time of the fire?

A. 120 Randolph street.

Q. Did you get your things out of the place at the time of the fire?

A. No; I did not; they were all destroyed.

Q. Was you engaged in business alone there at that time?

A. Yes.

Q. How long had you been in business there at the time of the fire?

A. I went in with Salzer in the spring of 1869, and continued there until the fire.

Q. You had this device that is now shown at the time that you dissolved with Salzer?

A. Yes.

Q. Where did you keep it at the time you were in business with Salzer?

A. At my place of business.

Q. Did you keep it in plain view?

A. No; it was always secreted.

Q. Why did you keep it so secreted?

A. I have already stated.

Q. Why was it?

A. I thought it was a wise thing for me to do until I had it patented.

Q. How old were you then?

A. When?

Q. At the time of the fire.

A. About 25 years and one month.

Q. How long had you been keeping this model secreted at the time of the fire in 1871?

A. Between 4 and 5 years.

118 Q. How long had Salzer been in partnership with you when you dissolved with him?

A. About 2 years.

Q. Where did you keep this device which you say was secreted?

A. At my place.

Q. In what special part of the place—in what room?

A. I changed it from place to place occasionally.

Q. How often did you change it from place to place during that time?

A. Probably 5 or 6 times any way.

Q. During what length of time did you change it from place to place 5 or 6 times?

A. From probably '67 to '69.

Q. From what place did you change it to another; give the location in the room where it was and to which you changed it?

A. Well, we had a partition dividing the front from the rear of the basement, and against this partition, facing the front, we had some shelving, and I remember of changing it on this shelving; I had it in the rear of this partition, and also had it under the floor.

Q. What sort of a partition was it?

A. It was a board partition.

Q. What object had you in changing it from place to place so much?

A. To prevent any person from seeing it.

Q. What need was there for you to keep it in that place of business, if it was necessary for you to keep any one from seeing it?

A. That was where I did all my tinkering.

Q. If you desired to keep it secreted could you not have taken it away from the shop if you was afraid any one would see it?

A. I could have done so if I had a mind to.

Q. What necessity was there for your moving it from place to place about your shop for three years to keep it from any one's view?

A. I had to keep it from any one's view.

Q. It was a simple device on a cigar box which you secreted?
A. It was a device like that one, yes, sir.
Q. As near as you can remember?
A. As near as I can remember, yes, sir.
Q. How many years was it from the time that you commenced secreting it until you finally made it public—from the
119 time of its first construction, I mean?
A. The model was burned up in the fire as stated, and in the spring of 1873 I obtained my patent.
Q. And in the spring of 1866 you devised it?
A. Yes; it was in 1866.
Q. Now what was your object in keeping it secreted?
A. I have already stated that it was my intention to take out a patent at the time that I went into partnership, but for reasons that I stated, I concluded not to manufacture or take out a patent.
Q. You said that you dissolved partnership in 1869; what was the reason that you did not get out a patent in 1867 or in 1871 when when you had no partner, when you were alone in the business?
A. It was principally because I was short of funds. When I first went into partnership with Salzer I had not a dollar, and Mr. Salzer paid half of the purchase-money and I gave my notes to my father and had to work them out and pay them off; at the time of the dissolution with Salzer I had to buy him out.
Q. How much money did you pay when you and Salzer bought your father out?
A. I do not remember the amount.
Q. Come within $500 of the amount if you can.
A. If you want me to guess at it, I would say $1,000.
Q. Have you any recollection about it one way or the other?
A. No, not positive.
Q. Have you a general recollection?
A. I think that is about the sum.
Q. You paid him $1,000?
A. No, I think that is the entire purchase-money.
Q. Of which you paid one-half?
A. Yes.
Q. Did you ever pay that half?
A. Yes.
Q. When did you pay it?
A. At various times, in installments.
Q. When did you complete the payment of the $500?
A. I do not remember that, and the books are burned.
Q. Was it the first or second year after the purchase?
A. I think it was in the second year.
120 Q. How many men did you have at work for you after Salzer and you dissolved until the fire?
A. I think about 5 men.
Q. Were they busily employed during that time?
A. Most of the time.

Redirect examination:

Q. How much did you pay Salzer at the time of the dissolution, and how did you pay it?

A. I think the sum paid him was about the same as he put in, and if I remember correctly, it was paid in installments.

Q. You gave him your notes, and afterwards paid them off?

A. That is my recollection now.

Q. Did your loss in the fire seriously affect your pecuniary condition?

(Objected to.)

A. It did.

Q. Using your own expression, were you short of funds continually from the time of your purchase from your father until you were enabled to recover from the effects of the fire?

(Objected to.)

A. At the time of our purchase from my father we were doing small business in repairing and key fitting, and our income was of course in proportion. I did not have the heart myself to push very rapidly in view of the decrease of the trade, for the reasons I have stated, on account of the incompetency of my (acting) partner, so we dragged along very slowly, and it was nip and tuck to pay the bills, especially on my part to pay father my half portion. After the dissolution with Salzer the business was in a very little better condition than when we took it, and I saw that some necessary improvements had to be be made, and I made them. This involved considerable outlay, and that, together with what I had to pay to Salzer for his interest, left me short of funds always up to the time of the fire. I was just then about getting through with the improvements when the fire came along. After the fire I was very short of funds, and I took in a partner again who had some money,
and continued with him about two years, but we could not
121 agree, and it was not until I dissolved with him that I felt able to and willing to go on and manufacture this device.

Recross-examination:

Q. Did you or not put up after the fire transom lifters without the extension of the operating rod above the juncture of the operating rod with the lifting arm?

A. I presume that we did.

Q. Do you know whether you did or not?

A. Yes, sir.

Q. How many of that kind did you put up after the fire?

A. I do not remember.

Q. A considerable number?

A. Perhaps ever since then, 100.

Q. Did you manufacture that kind at your shop and put them up right after the fire?

A. Right after dissolving with my second partner.

Q. Who was he?

A. Jno. Shinkle.
Q. When did you dissolve with him?
A. I think it was in the spring of 1872.
Q. Can you tell where you put up any of those transom lifters which were constructed without the extension above the juncture of the lifting arm with the operating rod?
A. I did not put any up myself, I always had my men to do it.
Q. I do not mean individually, but where did your men do it?
A. I do not remember any particular place; we make them to-day.
Q. Tell what building they were put in, if you remember.
A. I do not know as I remember what building they were put in; yes, I can; we put them in the Metropolitan block, at the north-west corner of La Salle and Randolph streets; we put them in the basement; it was a place where the transoms were very narrow and vertical, and they were suspended directly from the ceiling.
Q. Did you put up but the one kind at that time?
A. I think we put up some in the upper floors, but used a device with guides above the point of junction.
Q. Was there any other buildings that you remember put-
122 ting them in?
A. I cannot remember any other now.
Q. Are they there now?
A. I do not know, but I presume so.
Q. Are you certain that they were put up in a place where the transom was narrow and was hinged at the top?
A. That was the way it was.
Q. Are you sure that all those put up were transoms of that kind?
A. To the best of my memory.
Q. Did you examine them after they were put up?
A. No.
Q. Did you examine the place where they were to be put up to see what kind of transoms were to be used?
A. No.
Q. You simply knew they wanted transoms there and sent these?
A. I presume there was a regular order brought for them, with a sketch of it, or it is possible that I sent a man down there to measure them and get the particulars.
Q. Did you ever put up any of that kind before the fire?
A. The only two that I made were, as stated, before the fire.
Q. What two were they?
A. The one model and the show case.

JOHN WOLLENSAK, being first duly sworn, testified as follows:

Q. State your age, residence, and occupation.
A. My age is 68; residence, Chicago; and occupation, locksmith.
Q. Is John F. Wollensak, the complainant in this case, your son?
A. Yes.
Q. When did you sell out your business to your son, or to him and Mr. Salzer?
A. About 14 years ago.

Q. Do you remember what year it was?

A. It was April, 1867; before everything was settled between us it was April. The papers were all lost in the fire, and I do not recollect the date.

Q. Where were you living?

A. At the corner of White and Sedgwick streets.

Q. From whom did you lease the house?

A. The owner lived in the country, and the house was rented of Mr. Crocker, the agent.

123 Q. What was Crocker's business?

A. He was a lawyer or real estate man, I believe.

Q. When did you move into that house, and how long did you live there?

A. I moved there on the 6th day of May, 16 years ago this last May.

Q. State how long you staid there.

A. Two years from the 6th of May, and I moved out on the first of May.

Q. How do you remember that it was 16 years ago last May that you moved there?

A. Because I have a daughter that was 16 years old last May, and she was born at the same time that I moved in; when I was taking in the last article she was born.

Q. How old is your son, the complainant in this case?

A. He was born September the 6th, 1846, at Albany, N. Y.

Q. Was your son, the complainant, living with you at the house on White street?

A. Yes.

Q. Did he continue to live there all the time that you were in that house?

A. Yes.

Q. Did he ever have a museum where he kept curiosities and relics while he lived with you?

A. He had a museum; he had a kind of closet in the room where he kept the articles and a good many things; it was his own.

Q. Did he have a museum of that kind before you moved to that house?

A. No.

Q. Did he have a museum after you moved out of that house?

A. He had some.

Q. He kept no regular museum after he moved out of that house and while he was living with you?

A. He had some articles stored away.

Q. Did he have any of them in a show case after that?

A. Yes; until the fire; he moved out then; we moved a little further up the street and there they got burned up.

Q. When did he quit living with you?

A. Until he got married he always lived with me; he got married after the fire.

124 Q. Do you mean that your son continued to live with you

all the time until he was married, or that he was there some of the time and had a room elsewhere?

A. He took his meals elsewhere for the most part; when he was with me he had his own room always.

Q. Did he ever tell you about what he was doing?

A. He always kept everything to himself; I never interfered with him.

Q. Was he that kind of a person, to keep things to himself?

A. Always to himself he kept everything.

Q. You never knew what he was doing?

A. No; he always done something extra for himself, and I never interfered with him.

Cross-examination:

(NOTE.—See stipulation and objections to direct examination of John Wollensak at the close of the direct examination of John F. Wollensak.)

Q. Are you the father of the complainant in this case?

A. Yes, sir.

Q. Where do you reside?

A. 156 Center street.

Q. What business are you engaged in?

A. I am a locksmith.

Q. Who are you with?

A. My son.

Q. Is he the complainant in this case?

A. That is what I hear.

Q. How long have you been at work for your son?

A. Since just about a year before the fire. It was two years after I sold out to him.

Q. For how much did you sell out to your son for?

A. $1,200.

Q. Did you receive the $1,200?

A. Yes.

Q. From whom did you receive it?

A. From him myself.

Q. How much did you receive from them?

A. The first time I got $600, and then two installments of $300 each.

Q. How long after you sold was it that you received the money?

A. The arrangement was made in April, and I received
125 my money just a few days before the first of May; then I left the shop.

Q. When did you receive the balance?

A. I received notes for the balance.

Q. What notes?

A. Two $300 notes.

Q. How much were the notes for?

A. $300 each.

Q. When were the notes paid?

A. When they became due.
Q. When did they become due?
A. I forget, but I believe that one was in 6 months and the other in a year.
Q. What year was it that you sold out in?
A. It was 16 years ago last April; it was in 1867.
Q. Where were you living in 1866?
A. On La Salle street; it was between Lake and Randolph.
Q. You lived there during what year?
A. 1866, until the 6th day of May.
Q. Who lived with you in 1866?
A. My son.
Q. Who else?
A. My children—my family.
Q. When you speak of your son, do you mean the man that commenced this suit?
A. Yes.
Q. How many rooms did you have in the house?
A. On La Salle street?
Q. Where you were living at that time.
A. They were all occupied as living rooms. I had 5 rooms on La Salle street. I was on one floor; was a shop and store underneath; was living on the first story.
Q. Were all those living rooms occupied by yourself and family during that year?
A. They were.
Q. How many members did you have in your family at that time?
A. One was dead.
Q. How many were there during the year 1866?
A. There were seven—five children and my wife and I.
Q. How old were the children then?
A. One was born the day that we moved out, and one died before that; he was about two years old.
Q. How old were the children then?
A. (No answer.)
126 Q. Did your family occupy all the rooms that you had in 1866 as sleeping rooms or living rooms?
A. We had one story—I had one story for myself.
Q. I mean the floor that you had; did you occupy it all?
A. The family used it.
Q. Tell what the family used each room for.
A. Well, the family used them; that is all.
Q. State what each was used for, and who occupied it.
A. I occupied them all and my family.
Q. You and your wife occupied one as a sleeping room?
A. Yes.
Q. Well, how were the others occupied?
A. The two girls and the two boys; there were three of the rooms—all sleeping rooms. I slept in the middle room, and the next was the girls' room, then the kitchen, and then the other bed-room. Front room we didn't use at all; we had more than we needed.

Q. Was that needed as a parlor?

A. I rented it out once, but they didn't pay their rent, and I had to get them out.

Q. What did you use the front room for; nothing?

A. No one used it.

Q. Was there any use made of that room by any member of your family as a sleeping room, or not?

A. It was first used as a sleeping room by my wife and I, but the mosquitoes were so bad that my wife said there was no use for such a large room and be eat up by the mosquitoes.

Q. Well, then, you occupied one room, the girls one room, and the large room made three rooms; now, who occupied the fourth room?

A. One was a kitchen.

Q. The kitchen was the fourth room?

A. Yes; and there was one bed-room between the kitchen and the main room.

Q. What was done with that room?

A. There was a bedstead in there, and a little girl slept in that.

Q. What was done with the other?

A. The room in front was just partitioned off; when I
127 moved in it was a public house, and I did not want to take it on account of the shape of it, but had to take it on account of the shop; if you want to find out I can send you to the house.

Q. This house that you have just spoken of, when did you leave it?

A. I left it there on the 6th day of May; I moved over on White street.

Q. What year?

A. 1867.

Q. How long did you live in this house before leaving it?

A. I could not tell you exactly.

Q. About how long?

A. I was there any way not quite two years.

Q. How many rooms were there in the house that you have just spoken of that were used by yourself and your family?

A. We occupied the whole floor except the front room, which some newspaper man occupied who would not get out.

Q. What was done with the front room?

A. That was my room.

Q. Well, that room I will call room No. 1 on this exhibit, which I will call John Wollensak's Exhibit A; now, then, what was done with room No. 2 on Exhibit A?

A. That is the room where we eat; and my bed-room back of that would make three rooms.

Q. What was room No. 3?

A. That was a closet.

Q. How large a closet was it?

A. Well, I could not say, but we could put a single bedstead in it.

Q. What was that room used for by you and your family?

A. We hung up clothes in it.

Q. What was done with room No. 4?

A. It was the sleeping room that the boys slept in.
Q. How many boys?
A. Two.
Q. What was room No. 5 used for?
A. That was the kitchen, but was big enough for two or three bedsteads.
Q. What was room No. 4 used for besides a room for the boys to sleep in?
A. There was nothing else in there; it was used as a bedroom.
128 Q. Was No. 3 used for anything else except to put clothes in?
A. There was a bedstead in there, the bedstead was on one side and the clothes on the other.
Q. Was there a window in it?
A. No; the light came in from this part here (showing) and here (showing).
Q. What was there in room No. 1?
A. We had certain articles in there—clothing and such things.
Q. What articles of furniture were in that room?
A. We had chairs and tables in there, but never occupied it.
Q. Did any one make any use of it?
A. No, sir; except if some one wanted to rent it.
Q. Was room No. 2 used for anything else but a dining-room and sleeping room?
A. No.
Q. Was room No. 3 used for anything else except the bedstead and to keep the clothes in?
A. That is all.
Q. Room 4 was a sleeping room for the boys?
A. Yes.
Q. Where did the rest of the family sleep?
A. In this kitchen.
Q. The balance of the family slept in 5?
A. Yes; the little ones slept in room 3.
Q. What children?
A. The little girls.
Q. And you and your wife were in room 2?
A. Yes.
Q. 5 was the kitchen?
A. Yes.
Q. And 1 was a spare room that you did not use?
A. Yes.

Mr. TOURTELLOTTE: I now offer in evidence the exhibit which is marked John Wollensak's Exhibit A.

Q. What year did you go to that place that you have just given a description of?
A. I went there a year before I went over to White street; it was not quite two years.
Q. And you lived there until May, 1867?

A. Yes.

Redirect examination:

Q. When did you first come to Chicago?
A. On the 8th day of May, 21 years ago.
Q. When you first came to Chicago, where did you live?
A. On Desplaines street, near a little street that I forget—
129 Meridian street, that is it. I lived on Meridian street, two houses from the corner of Desplaines street.
Q. How long did you live in that house?
A. I suppose I must have lived there two years.
Q. What house did you live in next?
A. I lived near Halstead street and Meridian street.
Q. Where did you move to from there.
A. La Salle street.
Q. Then the house that you moved in on La Salle street was the third house that you lived in?
A. Yes.
Q. Then the house that you lived in on White street near Sedgwick was the fourth house that you lived in?
A. Yes.
Q. Do you remember when you moved in the house on White street?
A. Yes; it was May, 1867.
Q. If you have any memorandum in your possession that shows when you moved in that house, please look at it and state what date it was that you moved in the house on White street.
A. It was in May, 1867, because I would not forget it if I lived 100 years.
Q. Is that the time that your daughter was born?
A. It was the very same day; before I had the last load in.
Q. How old is your daughter now?
A. 16 last May.
Q. If she is 16 now, and was born at the time that you moved in that house, was it in 1867 or 1865? Please make the calculation. (Witness makes calculation.)
A. I cannot make it quite; it was in 1867 when I moved in that house.
Q. Are you certain that you moved in that house when your youngest daughter was born?
A. Yes.
Q. What was that daughter's name?
A. Lena.
Q. I am talking about the next daughter, the one that is not married.
A. That is the one that I mean.
Q. Have you a daughter named Emma?
A. O, Emma, that is the one that I mean. Emma, that is it; I made a mistake in the name; I got a cold in my head and my memory is not good.
130 Q. Your daughter Lena is married?

A. Yes.
Q. And your daughter that is living at home is not married?
A. She is not.
Q. Emma is the one that was born in the house on White street?
A. Yes.
Q. How long did you live in the house on White street that Emma was born in?
A. I lived there two years.
Q. This diagram which you have made, which defendant's counsel referred to, is intended to represent the position of the rooms of a house which you occupied on La Salle street?
A. Yes.
Q. And not the house that you occupied on White street?
A. No, that is on La Salle street.
Q. How long did you live in that house on White street?
A. Two years.
Q. Were you living in that house on White street at the time that your son and Salzer bought out your business?
A. Yes.
Q. Did you ever go back to that house again to live after you moved away that time?
A. No.
Q. Have you got the leases for any of the houses that you occupied before the fire?
A. I doubt it very much.
Q. Have you got any other papers such as receipts for rent that will show where you lived before the fire?
A. No; at the time of the fire it was burned up, most all of it.

Recross-examination:

Q. Where are you living now?
A. At 256 Centre avenue.
Q. Who do you live with?
A. Mrs. Larned lives up stairs; I live on the first floor.
Q. Do you live in a house with your son, the complainant?
A. No.
Q. What members of your family now live with you?
A. One son and one daughter. I have two daughters, but one of them lives in Wisconsin and is married.
Q. Do you know a man by the name of Salzer?
131 A. I know both the boys and their father; I know the whole family.
Q. How long have you known the whole family?
A. Since they moved here from Galena. A daughter of mine learned the dressmaking business with them.
Q. Do you know whether your son is intimate with the young men or not?
A. He knows them, I suppose.
Q. Do you know?
A. One of them was his partner.

Q. Has he been intimately acquainted with him since the partnership?

A. I do not know.

Q. You have been at work for your son how long now?

A. Since about a year before the fire.

Q. Have you seen either of the Salzers about your son's frequently?

A. I have seen one of them there.

Q. Which one?

A. I have not seen him since the fire, because I have been working up stairs and do not come down to the store often. The Salzers have always been living on the North Side and I have been on the West Side.

Q. Have you talked about the testimony that you were to give here to-day with your son within the last three or four days?

A. Not as I know of, except here.

Q. You have not talked with him at all?

A. No.

Q. None whatever?

A. No.

Q. Do you know what he brought you here to testify to?

A. What I am asked to testify to.

Q. Did you know what you were going to be asked to testify about before you came here?

A. No; I knew I was going to court, but I did not know what testimony I was to give.

Q. Did you not talk to your son about it?

A. No.

Q. Have you any recollection of the number of rooms that you had on White street?

A. I have some recollection.

Q. How many rooms did you have there?

A. 1, 2, 3, 4, 5, that I know of.

Q. State what these rooms were used for, commencing with the first one, as you now remember?

132 A. The fact of it is that we did not have a parlor; it was all occupied, and my son had an extra room, and the rest was sleeping rooms and kitchen.

Q. Give me a diagram of the rooms of that house.

(Diagram made by the witness.)

Q. How large a family did you have at that time?

A. 8.

Q. State who they were.

A. The complainant is one, and the one in Milwaukee is two, one that is married is three, another boy makes 4, another boy makes 5, a girl makes 6, and me and my wife make 8.

Q. Tell what room you and your wife occupied on the diagram which you have made, and which I will call John Wollensak's Exhibit B?

A. Room No. 1.

Q. Who occupied room 2 as you have marked it?
A. Some of the children.
Q. Who occupied room 3?
A. My son, the complainant, and there is his extra room here, and No. 4 is the kitchen.
Q. Who occupied this room? (pointing.)
A. That is the closet.
Q. What was done with the closet; what did you use it for?
A. I did not use it; he had a museum there, the complainant did, (indicating); I never went in there.
Q. Who had room 3?
A. This one and this one was connected.
Q. Was anything in there, in this room 5?
A. Don't know.
Q. Do you remember what you used No. 6 for?
A. I do not remember whatever was done in the house. The most part that I remember is these rooms; don't know what my wife done with this room (6).
Q. You cannot tell now?
A. It was all used for the family there. My son had his own private room, and he had a bedstead in there.
Q. The rest were the family rooms?
A. Yes.
133 Q. The rest were family rooms?
A. Yes.
Q. All the rest of the rooms in the house?
A. Yes; the rooms were too small, and I rented a larger house.

SAMUEL SALZER, being first duly sworn, testified as follows, in answer to interrogatories propounded by complainant's solicitor:

Q. What is your name, age, occupation, and place of residence?
A. Name is Samuel Salzer; reside in Chicago; occupation, at present at the Leland House tending bar; age, 43.
Q. Do you know John F. Wollensak, the complainant in this case?
A. Yes.
Q. How long have you known him, and have you had any business connections with him?
A. I have known him since 1862, and in 1867 I put in some money in the business for my brother, and they did business together.
Q. Do you mean that you were in partnership with him in the way that you have mentioned?
A. Yes; from 1867 to 1869.
Q. In what business was it?
A. Locksmithing business, on Randolph street, in a basement; it was a north front.
Q. Do you remember the month the business commenced?
A. I do not, nor can I tell when it ceased, only it was in the spring of 1869 when I went into the wholesale liquor business. I knew nothing about the business, only I put the money in for my brother.

Q. Are you certain that the business that you have spoken of was commenced in the spring of 1867?

A. I think it was in 1867. If my brother was here he could state. I remember of putting the money in, and I think it was in 1867.

Q. Do you remember whether or not the partnership closed a considerable time before the fire?

A. Well, it was in 1869, because at that time I went into business and took my brother with me. Whether it was all settled up I do not remember now. I know I sold out my share and went
134 into the wholesale liquor store, and took my brother in with me there at that time.

Q. Where is your brother now?

A. Dwight, Illinois, in the dry goods business.

Q. Do you know whether Wollensak is intimate with him or not?

A. So far as being friends, they are. I meet Mr. Wollensak almost every day.

Q. Has he known where you were during all these years?

A. I think he has.

Q. Has he known where your brother was?

A. I think he did; they were such good friends I think he must have known. Must have seen him every little while.

Q. Do you know when you sold out?

A. The notes would show; he paid some in notes.

Q. How long was it before the last note was paid?

A. I do not know whether the notes were payable in one year or not; I did not need the money and wanted to make it convenient for him.

Q. You let Wollensak do as he pleased about the notes or payments?

A. Yes.

Q. He took his own time and paid when he pleased?

A. Yes; and got the money.

Q. Do you know what you sold out for?

A. I could not now say; it was not a very heavy business and did not involve a great deal of money, it was $600 or $1,000, or something of that kind; really on this question I have forgotten, for I have had so much trouble since that time, and it was really the business of my brother.

PAULENA WOLLENSAK, being first duly sworn, testified as follows, in answer to interrogatories propounded by complainant's counsel:

Q. Where do you reside?

A. 256 Center avenue.

Q. What relation to the complainant are you?

A. He is my son.

Q. Do you mean that he is your own son?

A. He is my step son.

135 Q. When was your youngest daughter born and what is her age?

A. Her name is Emma, and she was born in May, 1865.

Q. Where did you live at that time?

A. On White street at the corner of Sedgwick street.
Q. What city?
A. This city.
Q. How long did you live in that house afterwards?
A. 2 years.
Q. You moved out when?
A. In May, 1867.
Q. Who was your landlord when you were living in the house on White street?
A. The landlord was by the name of Bluhm and the agent was Mr. Crocker.
Q. When you left that house where did you go?
A. On Sedgwick street.
Q. Who was your landlord?
A. A man by the name of McCarty.
Q. Do you know his first name?
A. No.
Q. Have you examined, with your husband, for papers relating to houses in which you lived from 1865 to 1870—leases and rent receipts, etc.?
A. They were burned up in the fire; we looked over, I do not know whether he found any or not. I did not look myself.
Q. Did you see your husband examining for them?
A. He looked several times; he was looking last night.
Q. Were you with him when he was looking?
A. I was around there but I didn't look.
Q. Look at the paper which I now hand you and state what it is.
A. It is a receipt for taxes from McCarty.
Q. For what house is that for?
A. The Sedgwick street house.
Q. Was that paper found when you and your husband were looking over your papers?
A. Yes.
Q. Was that the only paper that you found at that time?
A. So far as I know; I do not know if he found more or not.
136 Q. Did your son, the complainant in this suit, live with you at the time you lived in the house on White street?
A. Yes.
Q. Did he at that time, or at any other time he lived with you, have any particular room?
A. He always had his separate room for himself.
Q. Do you remember any particular place that he had his separate room?
A. He had his separate room at White street and all over where we moved to; he kept a museum on White street.
Q. What did he keep in that room?
A. I cannot tell; he had a thousand things; he had lots of things on the shelves and in the show cases; all filled up.
Q. Can you name some of the things that he had?
A. What they used in the wars, birds, pictures, mineral, stones, and like that; he had lots of things; I cannot remember all he had.

Q. When did he first have that museum?

A. He commenced right away when we moved to the White street house.

Q. Did he ever have one before you moved to that house?

A. No.

Q. What became of it after that?

A. The things were packed up and I do not know what became of them afterwards. He took one away and then another.

Q. Do you remember anything about your husband selling out his business that he had when he went out of business?

A. Well, he always was in the locksmith business.

Q. The question is, do you remember when he sold out his business?

A. The same time that we moved away from White street—'67.

Q. Who did he sell to?

A. His son John.

Counsel for complainant now offers in evidence the receipt that was identified by the witness, and makes the same Exhibit A to the deposition of Mrs. Wollensak.

It reads as follows:

"CHICAGO, ILLINOIS, *Nov.* 27, '67.

137 "Received of John Wollensak one month's rent on his house rent & four dollars for water tax."

(Signed) "J. McCARTHY." (In pencil.)

Cross-examination:

Q. Did your son, the complainant, ever say anything to you about his making a model while you were living in the house on White street?

A. He did not say anything about it.

Q. Did he ever say anything about making an invention relating to transom lifters or windows about that time?

A. No, I do not remember of it.

Q. Did you ever see any model that he made while you lived there on White street?

A. I do not remember; if he did I did not take any notice of it.

DAVIS J. CROCKER, being first duly sworn, testified as follows in behalf of the complainant:

Q. What is your occupation and place of residence?

A. I reside at Hinsdale, Dupage county, and am a lawyer by occupation, doing business in Chicago.

Q. What was your business from 1865 to 1870?

A. The location of my business was the same and at the same place as stated.

Q. State whether you ever had any dealings with John Wollensak, the father of the complainant in this case; and, if so, when and what were they.

A. As attorney for Lambert Bluhm, who owned the building at

the corner of Sedgwick and White streets, I collected rents from Mr. Wollensak for rooms occupied by him in that building, the last of which collections I should say were made in the early part of May, 1867. I should say that such collections continued for more than one year back of that period. It may have been that the last collections were made in 1866 instead of 1867. Made collections for more than one year about that time. John Wollensak was the tenant and Lambert Bluhm was the landlord. I think
138 the central entrance of the house was on White street; there may have been a door also on Sedgwick street.

Q. Was that the only house that you ever rented to Wollensak?

A. That is the only one that I can recall.

Q. Have you the lease or any of the papers relating to that house?

A. I do not think I have any of the papers; my office was destroyed in 1871 with all of my papers.

Cross-examination:

Q. Have you any definite recollection of what year it was that you had charge of these premises?

A. My office was on Washington street at the time that I had charge of these premises, and in '68, which would be the current year after that, I moved up on Clark street. I know that it was before I moved that I attended to this business.

139 (COMPLAINANT'S EXHIBIT WOLLENSAK APPEAL.)

DEPARTMENT OF THE INTERIOR, UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file, wrapper, and contents of the appeal to the examiners-in-chief in the matter of the reissue application of J. F. Wollensak, filed June 16, 1880, for transom lifter and lock.

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fourteenth day of September, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the one hundred and fifth.

[SEAL.] E. M. MARBLE, *Commissioner.*

Honorable COMMISSIONER OF PATENTS:

SIR: I hereby appeal to the examiners-in-chief from the decision of the principal examiner in the matter of my application for reissue of letters patent No. 136,801, dated March 11, 1873, for improvement in transom lifters and locks, filed September 18th, 1878, which application, on the 15th day of October, A. D. 1879, was rejected the second time. The following are assigned as reasons of appeal:

The examiner erred in rejecting the application upon the claims originally presented.

The examiner erred in not allowing the claims originally presented.

J. F. WOLLENSAK,
By E. A. ELLSWORTH,
His Attorney.

140 *Statement of the Case and Points relied upon in Support of Appeal.*

Prior to Wollensak's invention, transom lifters had been composed of a long vertical rod arranged to move through guides on the door casing, its upper end projecting a considerable distance above the upper guide and jointed to the transom by a pivoted connecting rod. An example of the lifter is shown on the transoms of the examiners-in-chief's rooms.

The upper projecting end of the lifting rod has no lateral support, and being made of a small iron rod, is liable to be easily bent.

The function of the rod is to sustain the weight of the transom in opening and closing, and as the end of the connecting rod pivoted thereto, moves in the arc of a circle while sustaining the weight of the transom, such weight is transmitted to the long upper end of the operating rod in a lateral direction, and has the effect of bending it to such an extent as to prevent it from moving freely through the guide. The bends are either permanent and destroy the rod for practical use, or the rod vibrates above the guide and thus binds therein. To overcome these defects, Wollensak provides a guide for the upper end of the rod, by which its movements are steadied and the lateral bends prevented. Many expedients may be resorted to for guiding the end of the rod, one of which he shows and describes.

The rejected claims cover this guide in combination with the rod and transom, and the rod, transom, and lifting arm.

To meet the invention as well as the claims, the examiner cites the patent to Bayley & McCluskey, No, 79541, dated July 7th, 1868, for railroad car ventilators.

This patent shows the raised roof windows of a railroad car, hinged on one vertical edge to swing sidewise. A horizontal bar extending the whole or half length of the car is pivoted by short links
141 to the swinging ends of the windows. The bar is held in its horizontal position by loops or staples in the side of the car, and its movement horizontally opens and closes the windows.

The legal point involved is, whether or not the use of the sliding rod to open the windows of a railroad car would suggest the use of an upper guide for the operating rod of the transom lifter without invention. This involves the sole question of double use. The examiner is of opinion that it is mere double use. I take the opposite view that it is not mere double use, but involves invention because it produces a result different in kind. Wollensak uses the guide for the vertical operating rod, to overcome a defect practically existing in the old transom lifter, *i. e.*, he produces a new result in transom lifters, by which they are benefitted or perfected in their operation. This defect does not exist in the reference. There is no

strain on the horizontal rod from the weight of the windows. The object of several guides is to prolong the rod for operating several windows at once, and there is no possibility of strain upon the rod. Wollensak's invention relieves the rod under the strain of the weight of the transom. This new function, due to the change of position and combination, necessarily involves invention, and is something more than mere double use or obvious change. If in changing from the car to the window no new function was produced, it would be mere double use. If the only result produced was the opening and closing of the transom, there would be no invention because opening and closing car windows would be the same in kind. But where there is a new function performed, then the change is one in substance, and not a new occasion for the use of the device.

I desire to be heard orally before the examiners-in-chief.

Respectfully,

E. A. ELLSWORTH,
Att'y for Wollensak.

142 *Examiner's Answer to Reasons of Appeal.*

ROOM 153.—*June* 17, 1880.

In the United States Patent Office.

Appeal to the Board of Examiners-in-Chief.

In the Matter of the Reissue Application of JOHN F. WOLLENSAK for a patent for a Transom Lifter and Lock, filed Sept. 18, 1878.

The claims upon which appeal is taken are as follows:

"1st. The combination with a transom, its lifting arm, and operating rod, of a support for the upper end of the operating rod to prevent it from being bent or displaced by the weight of the transom.

"2nd. The combination with a transom, its lifting arm, and operating rod, of a support and guide for the upper end of the operating rod.

"4th. The guide G′ arranged above the junction of the lifting arm and upright rod, in combination with the prolonged rod V, the guide G, and arm A, substantially as and for the purpose specified."

The single reference upon which the claims are rejected is the patent of G. W. R. Bayley and J. McCluskey, No. 79541, July 7, 1868. (Ventilating windows.) Applicant restores the first and second claims which have been erased and now appeals upon claims one, two, and four, which are precisely the same in scope, varying only in the collocation of the words.

The examiner objects to this way of appealing upon several claims all alike when the utmost an applicant hopes for is to get a single one after erasing several "to please the office," as it is styled. The examiner, however, is powerless in the premises, except to protest against this "throwing of a tub to a whale," in the way of
143 being willing to sacrifice all but one of a number of equal claims in order to get one only which is the equivalent of the others, and which is a broad sweeping claim in a reissue which looks

to preventing future manufacturers of an article from availing themselves, just as applicant did do, of well known and commonly adopted devices. In the patent referred to in *in* figure 2 of drawing will be seen the rod D^2, guides E^2 E^2, and lifting arm F^2, pivoted to the operating and guided rod and to the transom window. A mistake of applicant's should here be corrected, as he seems to argue that transom windows are hinged usually so as to be lifted up when opened. The fact is that transom windows are frequently opened horizontally as well as vertically. All such in the examiner's own house open horizontally like those of Bayley and McCluskey.

It is apparently conceded by applicant, or at any rate must be with the reference drawing before him, that not the slightest change is required in Bayley and McCluskey's device to adapt it to any transom or set of transoms. Turn the sheet of Bayley and McCluskey's drawing so that the left-hand side becomes the top, and it meets literally applicant's 1st, 2d, and 4th claims. About this applicant makes no question, but argues that because his own transom lifts harder and the old device becomes more useful, that it is therefore patentable. It by no means follows that the well known vertically swinging transom moves harder than the horizontal car transom which is usually turned upon wet, rusty, and dust-covered hinges.

Suppose applicant's transom does lift harder, and the old device does here do more work, it is still the old device taken bodily from one window and put on another. As well might a man try to patent an old locomotive (which had previously been only used with light passenger trains) as a new one with a heavy freight train, where it did more work and was more useful.

The office believes that not even a suspicion of invention, or even great judgment, was required to take a lifter off of a
144 car window and put it on one inside of a house, and it does not for a moment concede that a shadow of a new function was brought out in this bodily transfer. Any one of applicant's claims appealed would prevent Bayley & McCluskey from using their own device, on their own cars, whenever convenience dictated the opening of the transom vertically.

Respectfully submitted, A. G. WILKINSON,
Examiner.

Brief of Applicant.

To the hon. board of appeal, U. S. Patent Office:

In the matter of the application of J. F. Wollensak for reissue of letters patent No, 136,801, dated March 11th, 1873, on appeal to the examiners-in-chief.

The claims upon which this appeal is taken are as follows, to wit:

1st. The combination with a transom, its lifting arm and operating rod of a support for the upper end of the operating rod to prevent it from being bent or displaced by the weight of the transom.

2nd. The combination with a transom, its lifting arm and operat-

ing rod, of a support and guide for the upper end of the operating rod.

4th. The guide G′, arranged above the junction of the lifting arm and upright rod, in combination with the prolonged rod U, the guide G, and arm A, substantially as described, for the purpose specified.

The above recited 4th claim was contained in the original patent allowed by the examiner from whom the present appeal is taken.

The 1st and 2nd claims are new in the reissue application. As to the 2nd claim, I am satisfied that it does not differ materially
145 from the first, the difference being the addition of a function performed by the mechanism of the first, and am therefore willing to erase it. I also think that the word "support" should be changed to "guide" in the first claim.

Just here I desire to correct an error into which the examiner has fallen. In his answer to the reasons of appeal, he asserts, without assigning any reason for the assertion, that all the appealed claims are alike, and upon that basis takes the opportunity of insinuating that "the utmost applicant hopes for is to get a single one after erasing several to please the office, as it is styled." If this is seriously intended to apply to Wollensak's case, a simple denial of its truth, which I here make, is all that is required. If it is intended to influence the action of the examiners-in-chief, it is apparently predicated upon a mistaken idea of their judgment.

The second claim may be erased without injury to the case; so also it may be allowed with the same result; but there is this difference between the 1st and 4th, that one is generic, and the other to special devices. Under such distinction I have yet to find the decision of the office or courts, in which two claims are given equal scope.

The applicant does not stand upon the ground of a mere improver upon devices previously employed for the same purpose, but he is the first man to produce the result by any means whatever; therefore he is clearly entitled to the two claims in question.

The reference cited by the examiner I have heretofore considered in my former statement of the case. It is not an improvement in transoms, and could not, without change, be applied to them. Even supposing the devices themselves to be the same, which I deny, their combination with a transom to produce a different result or to cure a radical defect in its operation as a transom, is a new and patentable combination. It may be a combination of old devices, but that is as patentable as anything else under the law. The result produced is the evidence of invention, in such a case, and, as already stated and shown, the result produced with the transom is dif-
146 ferent from that in the reference. It is a difference in kind, and not a mere new occasion for the use of the mechanism.

The examiner says "that not the slightest change is required in Bayley & McCluskey's device to adapt it to any transom or set of transoms. Turn the sheet of Bayley & McCluskey's drawings so that the left-hand side becomes the top, and it meets, literally, applicant's 1, 2, and 4 claims. About this applicant makes no question," and seriously presents this as an argument.

In the first place, the drawing is not a reference. It is the invention illustrated by the drawing that we are to look to. If the invention were worked as the examiner proposes to "work" the drawing, Bayley & McCluskey would no doubt be somewhat astonished to find their railroad car tipped up on end, not to mention the discomfort and consternation of the passengers. Their interest in the operation of the windows other than as a means of escape from a railroad accident would not probably be very absorbing.

The examiner falls into very great error in his statement that applicant makes no question but that the reference is the same thing as his invention when the drawing of the reference is turned round. Applicant does make a very great question of it. The reference would not work even if the car itself were turned up. Place the slide bars in the reference on the side of the car toward which the windows open, as is always done in transoms, and the whole device would be inoperative. The connecting links would then lock the bar instead of moving the window.

Respectfully submitted,

E. A. ELLSWORTH,
Att'y for Applicant.

No. 6126.

UNITED STATES PATENT OFFICE, *June* 23*d*, 1880.

Before the Examiners-in-Chief on Appeal.

Application of J. F. WOLLENSAK for a reissue of Patent No.
147 136,801, dated March 11, 1873. Application for reissue filed September 17, 1878.

Transom Lifter and Lock.

The claims in dispute are the first, second, and fourth, as follows:

"1. The combination, with a transom, its lifting arm, and operating rod, of a support for the upper end of the operating rod, to prevent it from being bent or displaced by the weight of the transom.

"2. The combination, with a transom, its lifting arm, and operating rod, of a support and guide for the upper end of the operating rod.

"4. The guide G′, arranged above the junction of the lifting arm and upright rod, in combination with the prolonged rod V, the guide G, and arm A, substantially as and for the purpose specified."

The third claim has been allowed. The fourth is the same claim as the second in the old patent, 1873, and cannot be seriously objected to. The second claim is now waived by applicant as being tautologous with the first, and he also desires to replace the word "support," used in the first claim, by the word "guide," the original and more correct designation, which he should be allowed and required to do.

This narrows the matter in controversy to the consideration of the first claim so amended. We see nothing in the reference cited bearing on the matter herein claimed. Wollensak's device is, in the first place, a "lifter" designed for raising against gravity a transom

hinged and swinging horizontally. The improvement covered by the claim consists simply in furnishing the vertical operating rod with a guide above the lever connection, as well as below, to prevent the rod from being bent and displaced, and thus impaired for operating, as occurs with the old form.

Nothing of all this is found in the reference. There are no transoms, no lifters, no gravitating weight to be supported, and
148 no tendency to bend the operating rod by any incumbent weight; simply a series of windows, hinged in the French style, and arranged to be simultaneously opened and closed by a continuous rod or rods in guides, with lever connections to each window, so arranged that they could not afford support for the same did their weight bear upon the rods. The one invention could never suggest or dominate the other, and if made by the same applicant the office would undoubtedly be swift to require division and separate patents for the same. To construe Bayley & McCluskey's patent as covering Wollensak's device, now in dispute, would be to concede to them much broader claims than any set up by the latter.

We must hold that applicant is entitled to what he now claims, subject to his own suggested amendment of the first claim, and therefore reverse the examiner's decisions regarding the first and fourth claims, while affirming it as to the second claim.

H. H. BATES,
R. L. B. CLARKE,
Examiners-in-Chief.

DEPARTMENT OF THE INTERIOR, UNITED STATES PATENT OFFICE,
WASHINTON, D. C., *June 23d*, 1880.

J. F. WOLLENSAK,
Care "E. A. ELLSWORTH, *Cinn., Ohio.*

SIR: Your application for a patent for an improvement in transom lifters and locks, (reissue); application for reissue filed Sept. 17, 1878, has been considered by the examiners-in-chief, upon appeal, and they reverse the examiner's decision regarding the first and fourth claims, while affirming it as to the second claim. Copies of the decision will be furnished at the usual rates.

Very respectfully, E. M. MARBLE,
Commissioner of Patents.

149 *Testimony for Defendant.*

APRIL 1, 1881.

Present: Thomas A. Banning, Esq., for complainant, and F. W. Tourtellotte, Esq., for defendant.

C. W. CRARY, being first duly sworn, testified as follows on behalf of defendant:

Q. State your name, age, occupation, and place of residence.

A. C. W. Crary; occupation, machinist and model maker.

Q. In what business have you been engaged for the last ten or fifteen years?

A. Been engaged in the model business and light machinery, and patent soliciting.

Q. Where have you been engaged during that length of time?

A. I have been on the west side on Randolph St. since the big fire; am now at 125 West Randolph St.; prior to that I was on the north side for some length of time—North Clark St.

Q. Where were you prior to the fire?

A. I was on Randolph St. about a year before the big fire.

Q. Are you familiar with a patent transom lifter called Wollensak's, as shown in the exhibit here presented, marked "Complainant's Exhibit Wollensak's Transom"?

A. Well, I have seen them frequently. Since the big fire, and before, I have done a good deal of locksmithing work in my business, and have had chances to see quite a good many of them.

Q. Where have you seen them in the city in operation or otherwise?

A. I have seen them in stores and places of that kind.

Q. Are you familiar with the mechanical principles, so called?

A. I claim to be; have had pretty good schooling in mechanics.

Q. Please examine the exhibit now shown you, marked "Defendant's Exhibit A," which we now offer in evidence. I will call your attention to the construction of the transom lifter.

A. Well, I have seen that same style in use on buildings.

150 Q. Please examine the transom lifter marked "B," in the same exhibit, and state whether you have seen that before.

A. I have seen that kind, yes.

Q. State what that is; whose transom lifter.

A. It is Wollensak's, as near as I know.

Q. Please state what, if any, is the difference between those two transom lifters.

A. Well, all the difference I can see is simply moving one bearing above the connection instead of below.

Q. Please state in its construction how it differs, just the mechanical construction of it as you see it before you.

A. The construction is, that in one the rod is cut off at the joint and runs through the box above the joint instead of below.

Q. What might be the effect on the rod in the one marked "A" before you, in case the transom was heavy and the rod light?

A. The rod would be liable to bend.

Q. Please state what device is used in the transom lifter marked "B" to prevent the happening of the bending of the rod.

A. Simply carrying the bearing above the connection instead of keeping it below. This bearing is put above the connection here instead of having it below here (indicating). That is all the difference.

Q. In case the rod on the transom lifter marked "A" was found to bend by reason of a heavy weight upon it, what device would any ordinary skilled mechanis resort to to prevent such a result?

A. I suppose if it had been a case of my own I should have put the bearing above, the same as it is in "B."

Answer objected to by defendant's counsel, as not responsive to the question.

A. (Continued.) I think anyone that had any skill in mechanics would see at once what remedy would stop the springing.

Q. The question is, what would he do?

A. I think any ordinary mechanic would put the bearing above.

151 Q. Would that addition to the transom lifter marked "B" over that marked "A" be such an addition as is ever made to support a rod with the connection at its end where the force is applied?

A. I think it would be the principle that would be used under any and all circumstances almost invariably where the same defects were found.

Q. State whether or not to your knowledge such a principle is often used in the construction of machinery in preventing the bending or springing of a rod not supported where the force is applied at the end, as it is in the one marked "A."

A. That is a principle that has been used as long as I can remember, in mechanics, to obviate the same difficulty which they wish to obviate here.

Q. Now, please examine the model shown you now marked "Defendant's Exhibit B, Reiher's Patent," and state whether you have ever seen that transom lifter before, that kind of a transom lifter shown in that exhibit, before.

A. I never have seen them in use.

Q. The question is, whether you have seen that device.

A. I have seen the transoms, but never saw them on buildings and examined them in use.

Q. Will you now examine the one before you, and state if you have seen or examined a similar one so as to know its construction?

A. I think I understand the principles of them.

Q. Have you examined them when they were not in use and familiarized yourself with the principles upon which it acts?

A. I have examined them and seen the principle they work on.

Q. Please state what, if any, difference there is between the one in the exhibit now before you—Reiher's patent—and the one in the former exhibit marked "Wollensak's Patent."

A. Well, the difference would be substantially the difference between an engine with a good cross head and one working simply governed by a piston rod.

152 Q. Well, to be a little more explicit, wherein do these two transom lifters differ?

A. Well, Wollensak's depends on the rod for lifting and supporting, while Reiher's depends upon a slide that holds the transom lifter firm. The rod really has no supporting power in it only to shove it up and lower it; the transom is not supported by the rod that lifts it.

Q. Is there any similarity in the device in those two transom

lifters at the point from the juncture of the lifting arm to the top of the device?

A. They both use a lever, which is a common device of every country, common to the public. The way of operating is entirely different.

Q. Would the principle of the sliding of the rod above the juncture with the lifting arm throw the guide up, upon the same principle as the lifting of the arm in the Reiher patent?

A. Well, it would hardly accomplish the same results. It accomplishes the same results in one respect, and in another it does not.

Q. Please state in what each differs.

A. In Reiher's the rod is held firm at any point. In Wollensak's there is a liability of the rod to bend even between the bearings. The weight is not received directly on the bearings as in Reiher's.

Q. State any other difference between them.

A. Mr. Reiher's has a locking attachment which locks it anywhere.

Cross-examination by Mr. BANNING:

Q. What kind of models have you been engaged in making?

A. All kinds of Patent Office models.

Q. For how many years?

A. About two years before the big fire.

Q. Any other kind of machinery for any particular kind of machines?

A. Build all kinds of machinery that is called for—special machinery.

Q. You state that you have been engaged in soliciting patents also?

A. Yes, sir.

Q. How many patents have you ever solicited?

A. I don't know how many. I was of the firm of English
153 and Crary. Were in business, I think, about three years before we dissolved partnership.

Q. Did you ever prepare specifications?

A. Not myself. My boys have prepared specifications.

Q. All you did was to prepare models?

A. I prepared models, and of course knew what went to the Patent Office.

Q. At the time of this model making and preparing of models for application of patents, had you ever had any particular experience as a mechanic?

A. Well, I have been in almost all positions as mechanic.

Q. Please name some of them.

A. I was engineer of the steamer Mayflower for one year. Worked for the Michigan Central Railroad Co. in their machine shops for several years. Worked for the Northwestern Company here in Chicago. Was also with Danforth in his generator experiments for some six or eight years. Made the first experimental engine that

ever run with superheated steam. Since I gave up that business I have been running a shop myself here in Chicago.

Q. Have you been engaged in mechanics that were in any way similar to the inventions involved in this litigation?

A. I have seen a good deal that came under that head.

Q. Who prepared these models of the Reiher invention and these others which have been offered in evidence by the defendant?

A. I could not say who prepared them. I did not build them.

Q. Did you solicit the Reiher patent?

A. No, sir.

Q. Did your firm?

A. I think not. I think that has been got since we dissolved partnership. It is some four or five years since I was in the soliciting business.

Q. In what business are you now?

A. Running a machine shop at the corner of Randolph and Desplaines streets.

Q. You state that you have often seen the Wollensak invention in use. Please state when you first saw that transom lifter, if you remember.

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A. I don't know that I could state the first that I ever saw of those.

Q. State whether you have seen very many of them in use and whether they are very common.

A. I think a good many; I couldn't say how many.

Q. Did you ever see a transom lifter of the defendant Reiher in use?

A. Never saw it in use, only the one or two I have seen lately. I have not been doing much in locksmithing except for special parties for the last three years. I do some for the Chicago & Northwestern, but outside of that I have not done any locksmithing for several years.

Q. Do you not understand it to be a fact that the Wollensak transom lifter has come into very extensive use?

A. I presume it has.

Q. I understood you to state that you have seen the transom lifter marked "A" in use. Please state where you ever saw that, if you ever saw it.

A. Well, I don't know as I could state where, because my memory for things of that kind where I am not interested would hardly bear me out in stating dates.

Q. Is it merely an impression of yours?

A. No, sir.

Q. You are sure you have seen it in use?

A. Yes; but I could not state where.

Q. Please state when you saw it in use.

A. It was quite a number of years ago; but where I could not state.

Q. Can you not give some particular information of when or where you saw it used?

A. Well, as I told you, I do not pretend to keep dates for things

of that kind because I was not interested in it, and it did not trouble me. I gave it no particular examination. When I saw a thing of that kind I saw how it worked. Probably I take a little more notice of mechanical inventions of that kind than the general run of people.

155 Q. Are you able to state that if you only gave those matters a partial or hasty examination you have seen this device marked "A" in use?

A. How do you know when you get up in the morning whether you eat breakfast or not?

Q. You have said that the difference between this device marked "A" and the device marked "B," is that there is a bearing or guide above the point of juncture in the lifting arm and the upright rod. What is the object of that guide?

A. The object is to stiffen the rod, hold it firmly.

Q. Keep it in place?

A. Keep it in place.

Q. Does it not accomplish that object?

A. Yes, sir.

Q. Is there anything in the device marked "A" to serve that purpose?

A. There is nothing that does serve that purpose in full; it lets the rod bend when it gets up the mere weight, the more the further you are away from the bearing.

Q. Is there anything in the device "A" above the juncture of the arm and the lifting rod that serves the purpose of the guide in the device marked "B"?

A. Nothing above that serves it; they have below.

Q. There is an equivalent, is there?

A. An equivalent is below, but does not always answer the purpose.

Q. Is there any liability in case of heavy transoms of the rod being bent against the casing if the transom is hinged above, without there is something to guide or support the upright rod and keep it in one particular place?

A. It would be liable to bend, of course.

Q. Do you know how heavy transoms are sometimes made?

A. Sometimes they hang them from the centre. I don't know how heavy they have made them.

Q. In the case of a heavy transom which would bend the lifting rod in against the casing, would you consider that such a rod would be practical; or, in other words, would you not consider in such a case that some device for holding the rod and preventing this binding caused by the weight of the transom would be necessary?

A. I would think it would be necessary to have some way to hold it.

156 Q. You state that a skillful mechanic would naturally put this bearing above or this guide above, to prevent this binding of the rod with the door casing. Did you ever know that to be done in the case of a transom lifter?

A. I don't know as I did in the case of a transom lifter, but it is a device in common use in a variety of machines.

Q. Never knew it done in a transom lifter?

A. I don't know as I did in a transom lifter, but in machinery it is a common device.

Q. Does not that upper guide perform some other office, besides preventing the rod from being bent?

A. No more than what the one below does.

Q. Does it not perform the office of supporting that rod also?

A. It is simply removed from below up above; that is all the difference there is.

Q. Does not that, when placed above the juncture of the arm, perform an entirely different office and operate to support the rod and prevent it from bending in case of heavy transoms?

A. It would prevent bending in case of heavy transoms—well, it performs the same office, only to a larger extent.

Q. In case of the defendant's device do you not find above the juncture of the lifting arm with the upright rod a support or guide for the rod?

A. There is a guide for the arm that runs in a slide. The rod don't need any support any more than the slide gives.

Q. Then the upright bearings or guides in the Reiher patent hold the rod in one particular place and prevent it from bending out—form a support for the rod essentially the same as in the Wollensak?

A. It relieves the rod entirely of the side pressure.

Q. Does it not form a guide above the juncture of the arm with the lifter?

A. It forms a guide, but it relieves the rod entirely of any side pressure. It takes the pressure all off the rod and leaves it on the guides.

Q. In case of a transom hinged at the bottom, doesn't this
157 guide above the juncture of the arm and lifting rod operate as a support for the rod and prevent it from being bent outward?

A. It may form some support.

Q. Suppose it should be taken away, in that case what would be the result?

A. Well, you would have to have one either above or below, or your rod would go out. There would be nothing to keep it there.

Q. In the case of a transom hinged at the bottom, would it not necessitate the guide which you speak of as being placed below the juncture of the arm and lifting rod, being placed a considerable distance below that juncture?

A. That would depend altogether on the length of your levers—connecting levers.

Q. Would it not have to be placed at least one-half the width of the transom below the juncture of the arm and lifting rod?

A. Well, I never made any drawings to see how close you could get it there. It depends altogether on the length of your levers and the position you put it on here. (Indicating.) You are not confined to any one distance down.

Q. Does it not depend entirely on the movement up and down of the lifting rod?

A. Yes, sir; but you can put one rod so that an inch will close the transom clear shut, and another only shut it at twelve inches.

It is stipulated by agreement of counsel that the signatures of all witnesses on both sides shall be waived.

Adjourned to 11 o'clock a. m., Thursday, April 7th, 1881. April 7th, 1881. Said parties met pursuant to adjournment; present as before.

FRED. BURKHART, being duly sworn, testified as follows, on behalf of defendant:

Direct examination by Mr. TOURTELLOTTE:

Q. Where do you reside?
A. 192 West 12th St., Chicago.
Q. How long have you been residing in Chicago?
A. About 29 years.
Q. What is your business?
A. Machinist.
158 Q. How long have you been engaged in such business?
A. Nearly 20 years.
Q. Where?
A. In this city.
Q. What branch of mechanics have been engaged in?
A. Very nearly all of it. Wood-working machinery, packing-house work, press work, general engine building, etc.
Q. Are you proprietor of an establishment?
A. I am interested in one.
Q. How long have you been interested in a shop as partner or part owner?
A. I have been owner of a shop for the last 16 or 18 years, but I have been out of business; lost my capital; for a few years I have been working for other parties, superintending their shops.
Q. Where is your place of business?
A. 345 and 347 South Canal St.
Q. What is the special business in which you are engaged there?
A. General superintending.
Q. Are you familiar with the transom lifter constructed by Mr. Wollensak of this city, a model of which is now shown you, marked "Wollensak Exhibit B—Reiher Exhibit?"
A. I have seen them in use.
Q. Please examine the model now shown you marked "Reiher Exhibit 1," and state what that is.
A. That is a transom.
Q. Please state what it is. Are you familiar with it; whose is it?
A. I have seen it in market; never saw it in actual use.
Q. Have you examined the construction of the model now shown you marked "Exhibit 1 Reiher Patent," so that you understand its mechanical construction?
A. I have.

Q. Please look at the model now shown you marked "A" Reiher Exhibit 2, and see if you understand its operation.

A. I understand the mechanical principle of it.

Q. In the construction of the last-mentioned model shown
159 you, in case the rod which operates the transom should be liable to bend above the upper guide, what would remedy that defect?

A. Putting a guide above, similar to that in the one marked "B."

Q. Please state in putting such a guide above as you mention, whether that would be within the province or knowledge of any ordinarily skillful mechanic?

A. That is a common device used in a great many different parts of machinery; used in pumps, engines, and so on—a great many of them.

Q. Well, state whether that would be or would not be within the province of an ordinarily skillful mechanic to remedy the defect I have mentioned.

A. Certainly it would; most any mechanic would strike that; that would be the easiest plan to remedy it.

Q. Having, as you say, examined the Wollensak transom lifter and the Reiher transom lifter in the model before you, will you please state whether as a mechanical principle the extension of the rod in the Wollensak patent with the guide above the arm, is an equivalent for, or is similar to the slotted guide in the Reiher patent?

A. It is an equivalent, but not a mechanical principle. It answers the same purpose but is a different device. The one I would call a cross-head, the other I would call a double guide—a guide above and below.

Q. Please state whether or not the device used in the Wollensak patent to strengthen the rod above the guide, below the junction of the lifting arm and the rod, is a familiar principle used in other machinery?

A. It is, as I have said before, used very extensively in different kinds of machinery; mortising machines and wood-working machines use just the same exactly.

Q. State whether or not there is a difference of principle in the operation of these two transom lifters shown you, one Reiher, and the other the Wollensak patent.

A. As I said before, in one the rod is guided in an upper and lower guide and in the other the rod is supported by a cross-head; the cross-head is what holds the bearing of the lifting rod; the rod extending down holding the handle is not any support at all.

160 Q. How in the Wollensak patent?

A. The lifting rod has to support the whole of it.

Q. Would the guide above the juncture of the lifting arm sustain any special weight when the sash is partially down unless the transom was lifted high?

A. It would be in proportion to the height it was to the lower guide; when near the bottom the lower guide would have to sustain

more strain; as it goes farther up the strain is communicated to the upper guide; when in the centre the strain would be equal.

Cross-examined by Mr. BANNING:

Q. Have you ever testified as an expert in patent cases before?
A. I have never testified in any patent case before in my life.
Q. Have you ever made any inventions of your own?
A. I have made a great many.
Q. Did you ever obtain any patents on your inventions?
A. No, sir.
Q. Did you ever have any experience in connection with patent matters?
A. Yes, sir.
Q. In what way?
A. Getting up drawings and patterns; our shop last year got three out—our factory.
Q. Do you know anything about the difference between mechanical skill and invention, in the patent law sense of those terms?
A. I don't know much about patent law; I know the difference between mechanical skill and invention, but I don't know much about patent law.
Q. What is the difference between mechanical skill and invention?
A. A man may invent a thing without any skill; another may invent by creating, by having mechanical skill, setting his mind to work and working it down; and another one might find the same thing accidentally, but he would not be a skillful man.
Q. Then you consider that a very important invention might be made by a skillful mechanic without his exercising invention at all?
161 A. That is not what I said. I said a skilled mechanic might invent, but if he struck something accidentally it would not be a skillful invention; it might be something new, but it would not be ingenious.
Q. Can you give any rule which will enable one to determine whether a mechanical device comes within the domain of invention or mechanical skill?
A. I cannot give any rule for it.
Q. You have spoken of using guides similar to the one shown in Defendant's Exhibit "B" as being commonly used in machinery?
A. I have.
Q. Can you tell how far back such guides were used?
A. More than 20 years I guess, to my knowledge.
Q. Can you mention any of the particular places and machines where you have seen them used?
A. I can; take the common force pump; they have got some; portable engines have something of the same kind, and you will find it on some small stationary engines.
Q. Did you ever know of their being used in houses or in connection with any particular parts of houses or buildings?
A. I did not.
Q. You think up to the time of Wollensak's invention they had

never been used in houses or transoms or for any similar purpose, so far as you know?

A. Not to my knowledge.

HORATIO THOMAS, being duly sworn, testified as follows on behalf of the defendant:

Direct examination by Mr. TOURTELLOTTE:

Q. Where do you live?

A. In Chicago.

Q. How long have you lived in Chicago?

A. Since 1869.

Q. What is your business?

A. Machinist.

Q. How long have you been engaged in that business?

A. Since 1863.

Q. You have been engaged in mechanical business ever since you have been in the city?

A. Yes, sir.

162 Q. Where are you engaged now?

A. 86 and 88 Market street.

Q. Are you proprietor of the place, or at work there?

A. One of the proprietors.

Q. How long have you been one of the proprietors of that shop there?

A. Three to four years.

Q. Are you a practical mechanic yourself—experienced?

A. I am.

Q. How long have you been such practical mechanic?

A. I earned my living as one before I was 15 years old, or thereabouts.

Q. State whether you have examined the transom lifter marked Reiher Exhibit "B."

A. I have examined it.

Q. Do you know its working—the principle upon which it acts?

A. I do.

Q. Have you examined the transom lifter now shown you, Reiher Exhibit "B" 1?

A. I am familiar with it.

Q. Have you seen them in operation—these two transom lifters?

A. One I have.

Q. Which one?

A. The first one I examined; Wollensak's.

Q. Are you familiar with the principle upon which the Reiher transom lifter acts?

A. Yes, sir.

Q. Please state in what, if anything, that is different as to the principle of operation and construction.

A. In operation there is no difference; they both perform the same work. In construction they are entirely different.

Q. Please state the difference in the construction of each, and explain it.

A. I find in the Wollensak exhibit there is a horizontal bar with a bar diverging from it connected with the transom, and so by being moved up and down it raises and lowers the transom. I find in the Reiher exhibit a different device, in so much as the point of junction is dispensed with from the diverging rod as in the Wollensak exhibit; no particular difference further.

163 Q. State what the difference is between the transom lifter marked "A" Reiher Exhibit and the one marked "B" in the same exhibit.

A. The only difference is that the one marked "B" is supported above the point of junction with the diverging rod, whilst "A" is only supported below.

Q. In case of the bending of the lifting rod in Exhibit "A" above the point of juncture by reason of the weight of the transom, what device would remedy that defect?

A. There might be many that would; there most undoubtedly are many that would.

Q. What would be the ordinary device known to all skilled mechanics?

A. The one shown in Exhibit "B" would readily suggest itself as being a well-known mechanical movement.

Q. When you say it is a well-known mechanical device or movement, what do you mean by that?

A. I mean it is one which is in general use and is under the every-day observation of every-day mechanics and ordinary machinists. I have said machinists; saw-makers are mechanics, but possibly would never see it in a hundred years; but in all machine shops it is well known.

Q. At what point on the lifting arm is the weight of the sash sustained in the Wollensak patent before you?

A. At the junction of the two rods.

Q. Would it always be there?

A. It would always be at that point, at the junction of those two rods.

Q. Would there not be a pressure upon the lower guide?

A. As the rod is lowered—as the diverging rod approaches the lower guide—the pressure would be greater.

Q. At what point is the heft of the transom sustained in the Wollensak patent; would or would it not be——

A. Locked.

Q. In any condition?

A. That would be——

Q. Where would the point of bearing be in the Wollensak patent when the transom was open or partially so?

164 A. The point of bearing would be on the two guides; as it was more or less open it would be more or less at the top or bottom of it.

Q. At what point would the weight rest; would it rest here where it is locked, or on the device sustaining it?

A. The weight is communicated to the perpendicular rod and would rest at this point (indicating).

Q. What do you mean by this point?

A. It would rest between these two.

Q. Would it be sustained there?

A. No, the weight is not there; the weight is here (indicating). The weight of the sash is directly between the two guides.

Q. Is it not directly communicated at that point?

A. It is communicated in this stop, to the third bearing which acts as a lock or stop.

Q. What do you mean by a lock or stop?

A. Any device which holds the perpendicular rod at any place where it may be set.

Q. Then would not the bearing be at that place—the heft or weight communicated to that spot?

A. It would be communicated there.

Cross-examination by Mr. BANNING:

Q. Have you testified as an expert in patent suits before?

A. Not as an expert; I do not now.

Q. You do not testify as an expert now?

A. No sir, as a practical mechanic.

Q. You have done some work for the defendant, Mr. Reiher, have you not?

A. Yes, sir.

Q. Are you doing some now?

A. Not that I know of; maybe.

Q. You are on very friendly terms with him?

A. I have not any friendship for him at all.

Q. How is it you come to appear as a witness here to-day?

A. Simply because Mr. Reiher requested me to. It is part
165 of my business to earn a dollar wherever the occasion calls for it. Mr. Reiher offered me my wages to come up here; I may as well do that as set in the shop.

Q. How much have you examined this matter?

A. I have examined—the merits of the Reiher lifter was called to my attention last Monday I think; the Wollensak transom lifter I partly made ten years ago, some parts of it; knew the principle of it.

Q. How much special study have you given to the points which you have been testifying about here this morning?

A. Very little; they require very little.

Q. Do you know the difference between mechanical skill and invention?

A. Yes sir.

Q. What is the difference?

A. Any man may be an inventor, a man may be an inventor without having any mechanical skill at all; a man may be a skilled mechanic and still not be an inventor.

Q. Then when you speak about things being such as any skilled mechanic would be able to put in, you do not mean that they would not also be subjects of invention?

A. Not by any means.

Q. You think they might be the subjects of invention and also of mechanical skill at the same time?

A. Most undoubtedly.

Q. Would the weight rest at different points in the Wollensak lifter, or at any particular point?

A. That question has been asked me two or three times. I don't really comprehend what answer is required. The direct pressure of the transom would most undoubtedly come on the two bearings—as I said before—as the point of junction might approach the upper or lower guide.

Q. Did you ever know of any such device or invention being used before the date of the Wollensak invention?

A. What is the date of his patent?

Q. The original patent is dated March 11, 1873.

A. That is, with the upper and lower bearings; that is his patent, I understand.

166 Q. Have you ever examined the Wollensak patent?

A. I never have. I don't know what he claims.

Q. Have you ever seen or known of the use of transom lifters like those shown you in exhibits before you before the date of his patent?

A. I never saw a transom lifter operated with a rod, except Mr. Wollensak's.

Q. Did you ever see any mechanism used for other purposes similar to the mechanism shown in these exhibits representing the Wollensak invention?

A. Very frequently.

Q. In what?

A. I have seen it upon the stem of a piston rod of an engine, particularly; I have seen it on the shifting power of a lathe. It is a very common device for that purpose. I have also seen it supporting the upper end of a pump rod—a common plunger pump. Those I call to mind very readily.

By agreement of counsel the examination adjourned until Monday, April 11th, at 11 o'clock a. m.

APRIL 11, 1881—11 a. m.

Said parties met pursuant to adjournment. Present as before.

CHARLES WHITTINGHAM was sworn and testified on behalf of the defendant as follows:

Direct examination by Mr. TOURTELOTTE:

Q. What is your age?

A. 40.

Q. What is your occupation and place of business?

A. My occupation is locksmithing; place of business, 74 South Halsted street.

Q. How long have you been engaged in the business that you are now engaged in?

A. 28 years.

Q. Where?
A. In London, England.
Q. Do you know one Wollensak, the pretended patentee or inventor of a certain transom lifter, of this city?
A. Yes, sir.
Q. How long have you known him?
A. About 7 years.
Q. Do you know the defendant in this suit, Mr. Reiher?
A. Yes, sir.
167 Q. How long have you known him?
A. About five or six years, I guess.
Q. Are you familiar with the transom lifter made by Mr. Wollensak?
A. Yes, sir; I have made them and used them myself.
Q. How long have you known of that form of transom lifter—the Wollensak?
A. Something similar was used before I knew of the Wollensak; in the old country something similar was used.
Q. Please examine the exhibit now shown you, the device marked A, defendant's exhibit, and tell me what it is?
A. It is of no use as it is.
Q. What is it? What do you see?
A. It is a transom lifter, but not a transom sustainer.
Q. Please examine the device marked B, in the same exhibit, and tell me what that is, if you know?
A. That is the same, only there is a guide above.
Q. What is the difference between device A and device B, in this exhibit?
A. There would be a difference; if this was not strong enough it would not sustain——
Q. What is the difference in the construction?
A. Only this guide above.
Q. What is the difference between devices A and B, in defendant's exhibit, here shown you?
A. This guide, that is all.
Q. Please state in full.
A. This guide above the junction.
Q. Of what?
A. Of the transom lifter.
Q. Is there any other difference?
A. That is all the difference. The rod is longer and the guide above to guide it. This would be stronger than this one (indicating).
Q. State fully.
A. It has a longer rod and the guide above the arm.
Q. Now in case the transom lifter shown you marked device A—in case the rod should bend on raising the transom, what device would remedy that, or hold it more firmly in place?
A. The device B would do it; the longer rod and the guide above.
168 Q. Please state whether or not any person of ordinary mechanical skill, in the event of the bending of the rod in de-

vice A, what would be the ordinary, common mode of strengthening that?

A. The common mode would be this, make the rod longer and put a guide above to strengthen that rod—keep it from bending.

Q. Please state whether that is or is not the known and common device used to strengthen a rod that has a bearing above the guide, as shown in device A?

A. Yes, sir; it is a common remedy.

Q. Do you know the transom lifter made by Mr. Reiher, the defendant in this case?

A. Yes, sir.

Q. Have you ever seen it?

A. Yes, sir.

Q. Have you examined the Reiher lifter so as to be familiar with the principle upon which it acts?

A. Yes, sir.

Q. Have you seen it in operation?

A. Yes, sir.

Q. State whether, in your opinion, the Reiher lifter acts upon the same principle as the Wollensak lifter, marked device B.

A. No, sir; it is different altogether.

Q. Can you tell in what that difference consists?

A. The difference consists in the guide.

Q. At what point in the Wollensak lifter is the point of bearing?

A. Upon the set screw below.

Q. At which guide is that?

A. At the bottom of the lifter.

Q. At what point is the point of bearing in the Reiher?

A. That is upon the guide.

Q. Where is that situated?

A. That is situated at the arm, above the lifting rod.

Q. At what point, with reference to the juncture of the arm with the lifting rod, is the point of bearing in the Reiher lifter?

A. I don't know how to explain it. At the junction there at the end of the arm.

Q. Is that raised and lowered with the rod at the point of junction, or does it remain stationary?

A. It is raised and lowered.

169 Q. Does the point of bearing change in the Wollensak lifter whether it is raised or lowered?

A. No, sir; it is still in one place.

Q. State whether or not the device marked A, defendant's exhibit, would or would not sustain the transom, if the rod was larger or heavier than the usual transom lifter.

A. Yes, sir.

Q. If the rod—the upright rod in the Reiher lifter, marked device B, defendant's transom—if the rod was light, even if there were a guide above it, would it bend or not if the transom was heavy?

A. It would bend.

Q. In the Wollensak lifter, does the upright rod perform any other avocation than simply raising and lowering the transom?

A. That is all it does; just raises and lowers it.

Q. Would the transom lifter be perfect and complete without the rod, so for as holding it in its place is concerned, in the Reiher?

A. In the Reiher; yes, sir.

Q. Then what office does the lifting rod perform in the Reiher, as distinguished from the one in the Wollensak?

A. The rod only performs; you would not have to mount a step-ladder to raise it. You can lift it with the rod. It is independent of the rod after it is lifted.

Q. And in the Wollensak?

A. It is not so.

Q. Is or is not the rod a part of the lifter itself?

A. It is a part of the transom.

Q. Could it be held in place or would it be serviceable without the lifting arm attached to it?

A. No, sir; it would not.

Q. You say you had seen a device similar to the Wollensak device B, prior to Wollensak's patent. Please state where.

A. We used them in the old country in a thousand different ways.

Q. Whereabouts, and when?

A. In London, in Birmingham, and Manchester.

Q. How long since you have seen a device similar to the
170 Wollensak used in London and Birmingham?

A. Since I went in the jobbing business; that is, repairing.

Q. Have you been proprietor of an establishment yourself during the time you have lived in Chicago?

A. Yes, sir.

Q. Where have you been in business?

A. At 176 West Madison St.

Q. How long were you there?

A. Seven years.

Q. Have you not had frequent occasion to arrange and construct transom lifters prior to the date of the Wollensak patent?

A. I made them and put them up. Of course Wollensak had a patent—claimed he had a patent on them.

Q. Prior to that time?

A. Not prior to that time.

Q. Didn't put any up prior to that?

A. No, sir; didn't have any call for them until after that.

Cross-examination by Mr. BANNING:

Q. When did you first come to this country?

A. I come here in 1871.

Q. From London, England?

A. Yes, sir.

Q. In the Reiher device, does the lifting rod perform any other office than that of raising and lowering the transom?

A. It does the lifting or lowering; that is all it does.

Q. It performs then the same office as the lifting arm in the Wollensak, does it not?

A. No, sir.

Q. In what points do they differ?

A. The difference is, you can take the lifting rod from Reiher's, and you can't take it from Wollensak's, and the transom stay where you put it.

Q. But, so far as the raising and lowering of the transom is concerned, do they not both perform exactly the same office?

A. Yes, sir; they perform the same office, and still they do not perform the same office, because one will do what the other won't do.

Q. What is that?

A. You can lift this—Reiher's lift the transom; the Wollensak's will lift it, but it would not stay without the lifting rod.

171 Q. What do you mean by the point of bearing?

A. The point of bearing in the Wollensak is in this guide below; Reiher's is in the guide above.

Q. Does not Reiher have a guide above the junction of the lifting arm and the upright rod?

A. It is not above when the transom is closed.

Q. Does it not operate as a guide to the upright rod so it cannot be bent in against the casing or spring out?

A. It is a guide to the fastening point.

Q. It performs then the same office as the upper guide in the Wollensak device, and also the additional one of holding the transom at any given point?

A. No; the guide above in the Wollensak is of no use to the transom whatever, only for the lifting rod; no use whatever; might just as well be below.

Q. The only use of the upper guide in the Reiher device is to maintain the upright rod at any given point, is it not?

A. Well, it is the lock of the transom to hold it open and fasten it.

Q. It is a lock and a guide, is it not?

A. Yes, sir.

Q. While the Wollensak is only a guide?

A. Is only a guide.

Q. That is what you mean?

A. Yes, sir.

Q. Do you know how heavy transoms are sometimes made?

A. They are made different weights, some very heavy.

Q. How heavy?

A. One hundred pounds.

Q. Any heavier than one hundred pounds?

A. I guess so.

Q. In the case of a heavy transom, in your opinion, would the device marked A in the defendant's exhibit be a practical device?

A. No; I don't think it would.

Q. To make it practical and operative, would it not require some upper guide to keep the rod from springing and bending with the weight of the transom?

A. No; it could be done with the other rod if it was heavy
172 enough to carry it. It don't require a guide to lift or hold it if the rod is heavy enough to take that bearing itself.

Q. In your opinion does it make any difference, so far as the operation of the Reiher or Wollensak device is concerned, whether the point of bearing or support remains stationary or moves up and down with the upright rod?

A. Yes, there is danger to the one and not the other of breaking the transom.

Q. You think that that would constitute a material difference?

A. Yes, sir; it would make the whole difference in this one, I think.

Q. Is not the point of bearing in the device C a fixed point?

A. No, sir.

Q. How is the transom held at any given point in the device C, except by the set screw in the lower guide?

A. It is not held at all; it is a set screw that holds it in any position they put it in.

Q. Then the point of bearing is——

A. On the set screw.

Q. A fixed point?

A. Yes, sir.

JUNE 16TH, 1881.

Present: Messrs. Banning & Banning, solicitors for complainant, and Messrs. Eldridge & Tourtellotte, solicitors for defendant.

MELVILLE E. DAYTON, being first duly sworn, testified in behalf of the defendant as follows:

Q. What is your name?

A. Melville E. Dayton.

Q. What is your age?

A. My age is 45 years.

Q. Where do you reside?

A. In the city of Chicago.

Q. How long have you lived in the city of Chicago?

A. Since May, 1874.

Q. In what business have you been engaged?

A. The business of solicitor of patents and mechanical engineer.

Q. How long have you been so engaged in such business?

173 A. I have been in the business of solicitor of patents between four and five years.

Q. What business were you engaged in prior to that time?

A. My business from the day of my arrival in Chicago was in connection with the putting in of gas works and water works. I acted as engineer for a firm engaged in that business for about two years, and was subsequently engaged or connected with a party in the manufacture of metallic safes.

Q. Have you been extensively engaged in the business of a solicitor of patents since you commenced that business?

A. My experience is not limited to the four or five years in which I stated that I had been exclusively engaged in that business; such experience extends back about ten years, and has extended from that time down to this, with exceptions, however, until within the last four or five years.

Q. Have you had considerable experience in the examination of mechanics of various kinds?

A. I have a decidedly mechanical taste, and I in early life studied mechanics and mechanical drawing, and have always been, more or less, engaged in mechanical pursuits, and have worked for a short time at the machinist's business when I was about the age of 16, and have make mechanics a special study throughout my lifetime. I have also made a special study in the last ten years of patents and patented devices, and have prepared numerous specifications and drawings for the construction of machinery, and for the purpose of obtaining patents.

Q. Have you ever been engaged as an expert in mechanical controversies?

A. I have on numerous occasions testified as an expert in connection with suits for infringement of mechanical devices.

Q. Have you ever examined the subject of transom lifters and their mode of operation, and principles of construction?

A. I have, quite fully; I have in connection with my business as patent solicitor prepared specifications for patents upon several devices for this purpose.

174 Q. Have you ever seen or examined the transom lifter patent reissued July 20th, 1880, numbered 9307, now shown to you, and marked "Complainant's Exhibit Wollensak Trasom?"

A. I have examined the Wollensak patent reissue number 9307, dated July 20th, 1880, and I have examined the model now before me and which is marked "Complainant's Exhibit Wollensak Transom." I do not find that said model in all respects conforms to the construction shown in the patent, and is not therefore a truthful model of the patent.

Q. In what respects does it differ from that described in the patent?

A. The model lacks the element of the roller, lettered "R" in the said patent.

Q. With that exception what is the difference between the patent and the model shown?

A. I discover no other difference between the model and the patent except that mentioned.

Q. Have you examined this model sufficiently careful to be conversant with the mode and principle upon which it acts?

A. Before answering this question, I wish to supplement my previous answer with a statement that in the model, "Complainant's Exhibit Wollensak Transom," there are three separate transoms and transom lifters shown, marked respectively "1," "3," and "4." These marks I find impressed upon the transom bar beneath the sash. I wish to say that the lifting device for No. 4 of this model is materially different or unlike anything shown in the said reissued patent, and should have no place in the model as representing the structure of the said patent.

Q. In what does it differ in the model from the specifications of the patent?

A. Said No. 4 lifter differs from the structure described in the said patent, in having the upper end of the long vertical rod or handle provided with an eye upon its upper end, and in having a fixed short guiding rod fastened to the door frame by supports
175 which hold said fixed rod at a short distance from the door frame, which fixed rod passes through an eye on the upper end of the long handled rod mentioned, and serves as a guide therefor. It also differs from anything shown in the patent in having a coil spring surrounding the said fixed guide or bar and located between the lower and upper ends of the bar, or rather between the lower end of the said bar and the eye on the upper end of the handle. There is nothing in the specifications of the said patent which at all refers to such a construction, so far as I observe, and such a construction is utterly inconsistent with the following statement which I quote from the specifications: "The upright rod is thus supported at three points, to wit, above, below, and at the joint where it sustains the weight of the transom." The eye that I have mentioned as passing around the fixed guiding rod is opposite and beneath the junction of the lifting arm with the long upright rod at whose top end said eye is placed; in other words, said long upright rod or handle rod is connected with the lifting rod of the transom and with the fixed guiding rod upon the door frame at the same point and at its extreme upper end; wherefore, said long upright rod has no guide above its junction with the lifting arm. All the stationary guides for the said long upright rod which corresponds with those marked G and G′ in the patent are located below this junction with the lifting arm, and there is none above said junction. So that only the numbers 1 and 3 have the guides G and G′ arranged with reference to the junction of the lifting arm with the long upright handle rod as set forth in the said reissued letters patent.

Q. In the numbers 1 and 3 shown you in the model, please state if you find that they are constructed in the said model as set forth in the specifications of the patent.

A. With the exception of the supporting roller R, present in the said letters patent and absent in the said numbers of model, said numbers 1 and 3 correspond with the construction shown in the patent.

176 Q. Have you examined the said model marked "Complainant's Exhibit Reiher Transom"?

A. I have.

Q. Are you familiar with its construction?

A. I am.

Q. Will you please state in what respect, if any, it differs from that marked 1 and 3 in the model before you, marked "Complainant's Exhibit Wollensak Transom," and give your reasons fully for any opinion you may express?

A. I suppose this question requires me to consider Nos. 1 and 3 of Complainant's Exhibit Wollensak Transom with reference to the patent reissued number 9307, which said model is intended to represent. Said patent relates exclusively to the location of the guides

G and G′; of the long upright operating rod, with reference to the pivotal junction with such rod of the lifting or brace arm by which the sash is thrown, except so far as it further relates to the roller of the patent, which, as I have stated, is absent in the model, and which is made the subject of the second claim in the patent. The claims which have reference to the location and arrangement, as above mentioned, of the guides G and G′ are as follows:

"1. The combination, with a transom, its lifting arm and operating rod, of a guide for the upper end of the operating rod, to prevent it from being bent or displaced by the weight of the transom.

"3. The guide G′, arranged above the junction of the lifting arm and upright rod, in combination with the prolonged rod U, the guide G, and the arm A, substantially as and for the purpose specified."

This patent, beginning with the 17th line, tells how transom lifters have heretofore been constructed, states the faults of such previous construction, and alleges the object of the present invention to be the remedy of such faults. The construction described as being old at the time of this Wollensak invention is mentioned in these terms:

"Transom lifters have heretofore been constructed with a long upright rod or handle joined at its upper end to a lifting arm,
177 which extends to and is connected with the side or edge of the transom sash, the sash being opened or closed by a vertical movement of the long rod. When thus constructed the upright rod is liable to be bent by the weight of the transom, owing to the want of support at or near the point of junction between the long rod of the lifting arm. The object of my invention is to remedy this difficulty; and to such end it consists in providing the proper support or support and guide for the upper end of the lifting rod during its vertical movements and while at rest."

I understand the construction admitted to be old to be such as would be shown in, say, No. 3 of "Complainant's Exhibit Wollensak Transom," if the upper eye or guide for the vertical rod were removed from the frame, and if such rod were cut off immediately above the junction of the pivoted lifting arm with such rod. The patent goes on to say that "this may be accomplished" (namely, the remedy of the different faults) "in a variety of ways, one of which I will now proceed to describe in detail;" whereupon the structures Nos. 3 and 1 are described.

Now, it is plain that in the admittedly old structure, or construction, the upright rod would tend to bend inward when the transom is opened, and beyond a question the application of the upper guide, which I supposed removed in the model, but which is lettered G′ in the patent, does operate to prevent the weight of the transom from bending the upper end of the long vertical rod inward when the transom is so lifted. Referring now back to the question which calls for a comparison between this structure shown in Nos. 1 and 3 of the Wollensak model with Complainant's Exhibit Reiher Transom, the first fact that forces itself upon my attention in the latter is this: That when the sash is opened in the Reiher transom not an ounce of its weight falls upon, either laterally or obliquely, the upright rod.

The Reiher transom is provided at its lower end with a block
178 which runs in a guide and which is so constructed with inner flanges and an external pin, arranged to bear respectively upon the inner and outer faces of the slotted guide which he employs and which is fixed on the frame so as to receive all the pressure resulting from the weight of the transom. The handle or the long upright rod in the said Reiher transom is designed and serves wholly as a means of reaching the foot of the lifting arm and pushing it upward or drawing it downward. As I before stated, not a particle of inward or lateral pressure falls upon the end of this rod by reason of the weight of the transom. In my judgment such upright rod may, for this purpose, as well be absent as present. I stated that the sole purpose of the long upright rod was to reach and lift the foot of the block with the end of the lifting rod. To be accurate, I also state that it serves, additionally, to operate a novel locking device with which said foot piece of the lifting arm is provided.

So far than as the function of the guide G′ in the Wollensak patent, or the upper guide in the numbers 1 and 3 of the Wollensak transom model is concerned, I find that the Reiher transom presents a totally different structure, operating on a totally different principle from that exhibited in the Wollensak transom model.

In my judgment the improvements of Mr. Reiher as exemplified in the Reiher transom exhibit, are based upon and proceed from a totally different point in the state of the art of transom lifters, from that admitted to be old in the passage quoted from Wollensak's patent specifications, and upon which Wollensak's improvements are based. It is a matter of common knowledge, I believe, and it is certainly within my personal knowledge, that transoms or flap windows were long prior to the date of Wollensak's original patent provided with a pivoted brace, the foot of which was movable against the frame of such window or door. This is precisely the point in the art to which Mr. Reiher in his transom lifter has applied his improvements. His improvements do not invove the removal
179 of the weight of the transom from a direct bearing against the frame at the foot of the lifting arm and have not that object. Mr. Reiher sought evidently only to provide a ready locking device by which the foot of the lifting arm may be secured at any point quickly, and by which he may at once reach the locking device and lift the transom through the medium of the long upright rod. Said long upright rod in his case is not therefore made stronger or weaker with a view to prevent its bending, and is only strong enough in any case to enable him to push up the foot of the lifting arm and by rotating the rod to unlock his novel fastening device. There was no fault in the old structure upon which Mr. Reiher has made his improvements like that assigned to the old device upon which Wollensak has improved, namely, the bending of the vertical rod having a lifting rod connected therewith, because said lifting arm did not in the old device attacked by Reiher have any vertical rod at all, and because the lifting arm distinctly bore against the frame instead of against the rod.

Wherefore, finding that Mr. Reiher did not need to remedy the faults sought to be corrected by the Wollensak patent, and that in the structure presented in the Reiher transom model the operating rod is applied in such a manner as to receive none of the lateral or sidewise pressure of the transom upon said rod, I do not find that said Reiher's transom model presents any of the features of improvements exhibited in the Wollensak transom as viewed in the light of the Wollensak reissued patent sued on.

Q. State whether in your opinion the sliding block with the guide for the same as represented in the Reiher transom is a mechanical equivalent for the prolonged rod and upper guide or eye in the Wollensak transom, and if they perform the same function, and accomplish the same purpose.

A. The slotted guide plate and fixed eyes, considered as mechanical devices, are often full equivalents of each other; in the two structures here presented, however, they are not combined the same elements for the same purposes, and do not perform with the
180 same functions. Mr. Wollensak's guides G and G′, or the upper and lower guides in the relevant Nos. 1 and 3 of his model, support a rod which, in the absence of the upper guide, would be inclined to bend inward, and said upper guide therefore is a support. In the Reiher transom, on the other hand, the slotted guide plate retains and directs the foot of the lifting arm. The upright rod of the Wollensak models and patent receiving the pressure of the weight of the transom sash requires such an upper support as he has provided. The upright rod of Reiher's lifter on the other hand not receiving the weight of the transom does not require the aid of a support, and Reiher's slotted guide plate does not give to his vertical rod any such support. In my judgment, therefore, the slotted guide plate of Reiher's does not perform the same office in his structure as the upper and lower supports of the Wollensak structure.

Q. State whether or not, in your opinion, the difference between these two transoms is material or merely structural.

A. I consider the difference material. This difference, perhaps, may be illustrated by reference to a steam engine. Every locomotive is provided with a cross-head, which supports the outer end of the piston rod for the purpose of giving to said rod what is termed a parallel motion. All lateral pressure from the connecting rod, which leads from said cross-head to the crank, is thrown upon the cross-head, and the piston rod simply reciprocates said cross-head; in another class of steam engines no cross-head is used, but the piston rod is extended beyond its pivotal junction with the connecting rod, and runs through a guide or support at its extended end; in that case the lateral strain from the connecting rod is upon the piston rod. These familiar and well-known devices in steam engines, respectively, correspond, in every particular, as to the guiding and supporting mechanisms, with the Reiher and Wollensak transom lifters.

Q. State whether or not, from your knowledge of mechanics, the use of the upper guide in the Wollensak transom, used
181 for the purpose of strengthening the upper end of the rod, is

not a familiar and well-known device in mechanical construction for such purpose.

A. It is.

Q. How long has such fact been known and used in mechanics?

A. The steam engine structure that I speak of is very old, probably older than I am. I remember it as long ago as 20 or 25 years distinctly. And there is a patent, which, I believe, is set up in the answer in this case, bearing date in 1868, which shows the same device applied to transom openers.

Q. Please examine the printed specifications and patent now handed to you, and marked "Reiher Exhibit Bayley & McCluskey" patent, and also examine the model now handed you, marked "Reiher, Bayley & McCluskey Model," and state what they exemplify, and state the principles involved in this patent and model.

A. I have examined and believe that I understand said patent and model. It is a device for opening and closing car windows for the purpose of ventilation, and consists of a rod B 2, which runs along the window frame at the side of the windows to be opened, which rod is connected with several windows in the same horizontal series by means of connecting links or bars, which correspond with the "lifting arm" of the Wollensak patent. The long rod D 2 is held in place by means of guides E 2, one on each side of each connecting link or "lifting arm." The model is a correct illustration of the device shown in the Bayley & McCluskey patent.

I consider the structure shown by Bayley & McCluskey to be, in every essential respect, the precise structure shown by Wollensak in his patent and models 1 and 3. In expressing this judgment, I have not overlooked the fact that Wollensak's long operating rod is vertical, while that shown in the Bayley & McCluskey patent is horizontal; but I do not regard this difference as material or essential, but rather as merely incidental to the differing arrange-
182 ment of the sash to be operated in cars and buildings. Moreover, the effect and the function of the guides E 2 in said Bayley & McCluskey patent are precisely the same as the guides in the Wollensak transom, namely, to hold the rod laterally in place. In opening and closing the windows neither of the devices, Wollensak's or Bayley & McCluskey's, would work if the guides were absent. Their presence or absence is a question whether the dog shall wag the tail or the tail wag the dog.

In car windows it is fair to presume that there will be some friction of the sash with its frame, and if the operating rod guides were removed, an attempt to remove the rod D 2 longitudinally would simply spring the said rod out from its place instead of opening the window. The guides hold the rod and compel the window to open in the said Bayley & McCluskey patent, precisely the same as the guides hold the rod and compel the window or sash to open in the Wollensak patent. In other words, in both patents the guides hold the operating rods in order that the window sash may be moved. I therefore regard said Bayley & McCluskey device as fully anticipating claims 1 and 3 of the Wollensak reissued patent.

Q. If it was found that a transom lifter constructed under the old

mode or method mentioned by Wollensak, with the upper end of the operating rod liable to bend by reason of the weight of the sash, would it be within the knowledge of an ordinarily well skilled mechanic to obviate the difficulty, by extending the operating rod and letting it pass or run through an eye or guide for its support?

A. A mechanic in making such extension of the operating rod and providing such guide would be doing only what has been done before in the case of the steam engine which I have mentioned, and by following the Bayley & McCluskey patent in connection with sash openers.

Cross examination waived.

Defendant offers in evidence the model of the Bayley & McCluskey device mentioned and referred to by the previous
183 witness Dayton, and which is made Exhibit No. 1 to Dayton's testimony.

Defendant also introduces in evidence a copy of the Bayley & McCluskey patent No. 79541, dated July 7, 1868, referred to by witness Dayton, and which is made Exhibit No. 2 to Dayton's testimony; and it is hereby stipulated by and between counsel of the respective parties that the said copy of the said patent shall be considered and have the same effect as if duly certified,

Defendant also offers in evidence a certified copy of defendant Reiher's patent, the same being numbered 226,352, and bearing date April 6, 1880.

Defendant also offers in evidence a certified copy of complainant's original patent, the same being numbered 136,801, and bearing date March 11th, 1873.

184 WOLLENSAK'S EXHIBIT "PATENT."—E. B. SHERMAN, *Master, &c.*

Reissue No. 9307.

United States of America.

To all to whom these presents shall come:

Whereas John F. Wollensak, of Chicago, Illinois, has presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in transom lifters, for which letters patent were reissued to him, dated March 11, 1873, which letters having been surrendered, the same have been cancelled, and new letters ordered to issue to him on an amended specification, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and whereas upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said John F. Wollensak, his heirs or assigns, for the term of seventeen

J. F. WOLLENSAK.
Transom Lifter.

No. 9,307. Reissued July 20, 1880.

Fig 1.

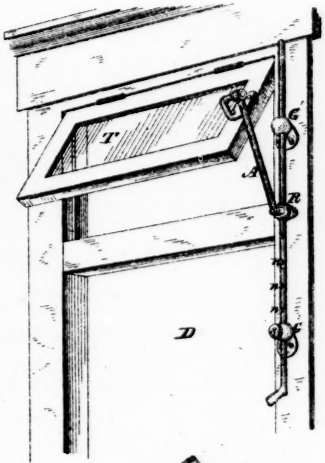

Fig 2.

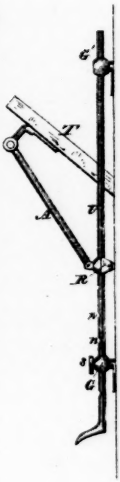

Fig 3.

No. 219.
Wollensak
vs.
Reiber
p. 186.

WITNESSES
Harry King
William Blacklock

By

INVENTOR
John F. Wollensak
L. Hill.
His Attorney

186

years, from the eleventh day of March, one thousand eight
185 hundred and seventy-three, the exclusive right to make, use, and vend the said invention throughout the United States and Territories thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twentieth day of July, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth.

[SEAL.] A. BELL,
Acting Secretary of the Interior.

Countersigned:
E. M. MARBLE,
Commissioner of Patents.

(Here follows diagram, marked p. 186.)

187 UNITED STATES PATENT OFFICE.

JOHN F. WOLLENSAK, of Chicago, Illinois.

Transom Lifter.

Specification forming part of reissued Letters Patent No. 9307, dated July 20, 1880. Original No. 136,801, dated March 11, 1873. Application for reissue filed September 17, 1878.

To all whom it may concern:

Be it known that I, John F. Wollensak, of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful improvements in Transom Lifters and Locks; and I do hereby declare the following to be a full and exact description of the same, reference being had to the accompanying drawings, forming part of this specification, which—

Figure 1 is a perspective view, showing one means for carrying my invention into operation. Fig. 2 is a side elevation of the same, and Fig. 3 is a detached sectional view.

Similar letters of reference in the several figures denote the same parts.

Transom-lifters have heretofore been constructed with a long upright rod or handle jointed at its upper end to a lifting-arm which extends to and is connected with the side or edge of the transom-sash, the sash being opened or closed by a vertical movement of the long rod. When thus constructed the upright rod is liable to be bent by the weight of the transom, owing to the want of support at or near the point of junction between the long rod and the lifting-arm.

The object of my invention is to remedy this difficulty; and to such end it consists in providing the proper support or support and guide for the upper end of the lifting-rod during its vertical movements and while at rest.

This may be accomplished in a variety of ways, one of which I will now proceed to describe in detail, although I wish it clearly understood that I do not limit my invention to this construction, but regard it as covering broadly any construction, combination, or arrangement of parts which shall support the long or operating rod and prevent it from being bent or displaced by the weight of the transom.

In the drawings, D is the door; T, the transom-sash, pivoted at top, bottom, or middle, as preferred; A, the lifting-arm that connects the sash to the upright rod; U, the upright rod, passing through two guides, G G′, one above and one below the point of junction with the lifting-arm; R, a friction-roller secured to the lifting-rod so as to bear against the wall and support said rod at its point of junction with the lifting-arm; *n n*, notches cut in the upright rod to receive the end of the set-screw; and *s*, a set-screw arranged, in connection with the lower guide and the rod U, so as to be convenient of operation for the purpose of fixing the transom at any required angle. The upright rod is thus supported at three points, to wit, above, below, and at the joint where it sustains the weight of the transom. It can also be adjusted and securely fastened so as to open the sash as much or as little as may be desired, and to lock it in that position.

Having thus described my invention, what I claim as new is—

1. The combination, with a transom, its lifting-arm and operating-rod, of a guide for the upper end of the operating-rod, to prevent it from being bent or displaced by the weight of the transom.

2. The roller R, arranged at the junction of the lifting-arm A and upright rod U in a transom lifter, substantially as and for the purpose described.

3. The guide G′, arranged above the junction of the lifting-arm and upright rod, in combination with the prolonged rod U, the guide G, and arm A, substantially as and for the purpose specified.

JOHN F. WOLLENSAK.

Witnesses:
T. W. GRAY.
L. A. DOOLITTLE.

(Here follows diagram, marked p. 188.)

189 UNITED STATES PATENT OFFICE.

JOHN F. WOLLENSAK, of Chicago, Illinois.

Improvement in Transom Lifters and Locks.

Specification forming part of Letters Patent No. 136,801, dated March 11, 1873.

To all whom it may concern:

Be it known that I, John F. Wollensak, of Chicago, in the county of Cook and State of Illinois, have invented a new and improved Transom Lifter and Lock; and I do hereby declare the following to be a full and exact description of the same, reference being had to

J. F. WOLLENSAK.

Transom Lifters and Locks.

No. 136,801. Patented March 11, 1873.

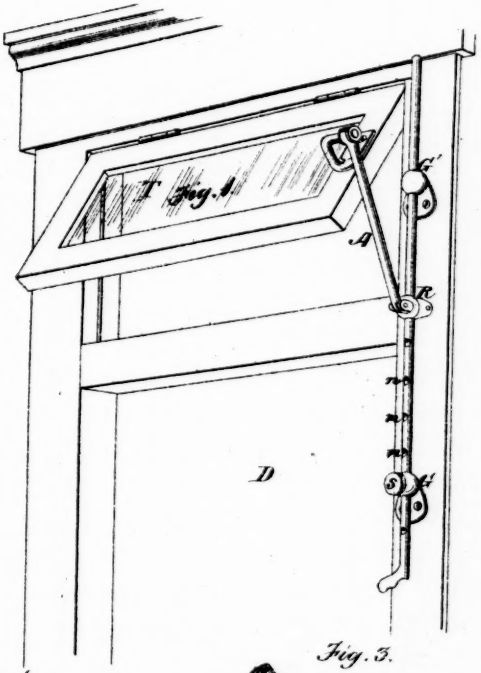

Fig. 1.

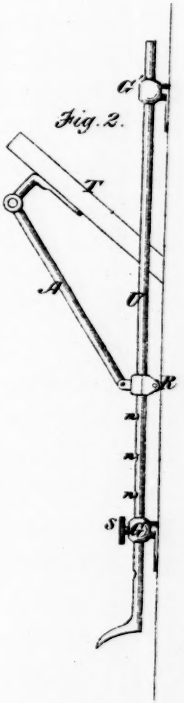

Fig. 2.

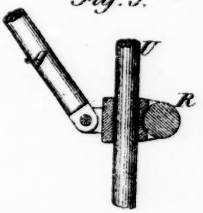

Fig. 3.

No. 249.
Wollensak
vs.
Reiher
} p. 188.

Witnesses.
C. F. Brown.
M. Church.

Inventor.
J. F. Wollensak.
by his Attys.
Hill & Ellsworth

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2 Sheets—Sheet 1.

F. A. REIHER.

Transom-Lifter.

No. 226,353. Patented April 6, 1880.

Fig. 1

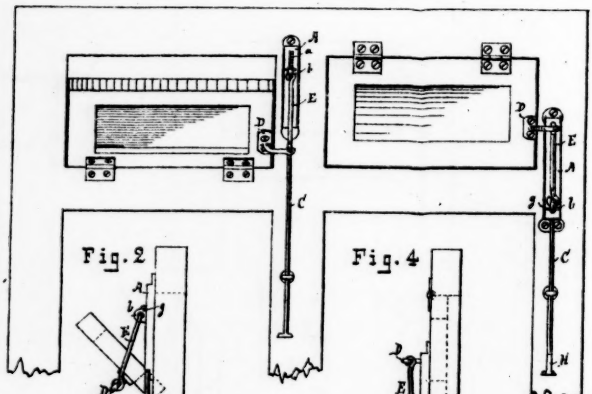


Fig. 3

Fig. 2

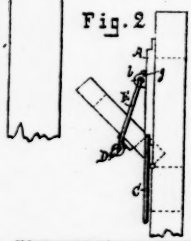


Fig. 4

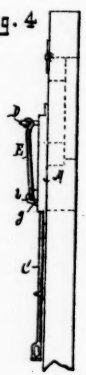
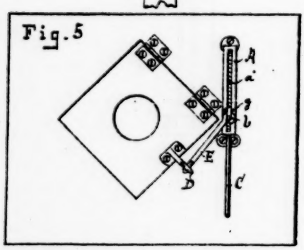


Fig. 5



No. 249.
Wollensak
vs.
Reiher
} b. 190.

WITNESSES:
J. C. Wilcke
A. Chain

INVENTOR:
Frank A. Reiher

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the accompanying drawing forming a part of this specification, in which—

Fig. 1 is a perspective view, Fig. 2 is a side elevation, and Fig. 3 is a section.

Similar letters of reference in the accompanying drawing denote the same parts.

Transom-lifters have heretofore been constructed with a long upright rod or handle jointed at its upper end to a lifting-arm which extends to and is connected with the side or edge of the transom-sash, the sash being opened or closed by a vertical movement of the long rod. When thus constructed the upright rod is liable to be bent by the weight of the transom, owing to the want of proper support at and above the point of junction between the long rod and the lifting-arm. The object of my invention is to remedy this difficulty by constructing and arranging the parts so that they will receive the proper support at the proper points; to accomplish which I first prolong the upright rod to some distance above the point of junction with the lifting-arm, and pass the end thus prolonged through a guide affixed to the wall above said joint; and, secondly, I provide the upright rod with a friction-roller at said point of junction arranged to bear against the wall and help sustain the weight of the sash, substantially as I will now proceed to set forth.

In the drawing, D is the door; T, the transom-sash, pivoted at top, bottom, or middle, as preferred; A, the lifting-arm that connects the sash to the upright rod; U, the upright rod, passing through two guides, G G′, one above and one below the point of junction with the lifting-arm; R, a friction-roller secured to the lifting-rod so as to bear againt the wall and support said rod at its point of junction with the lifting-arm; *n n*, notches cut in the upright rod to receive the end of the set-screw; and *s*, a set-screw arranged in connection with the lower guide and the rod U so as to be convenient of operation, for the purpose of fixing the transom at any required angle. The upright rod is thus supported at three points, to wit, above, below, and at the joint where it sustains the weight of the transom. It can also be adjusted and securely fastened so as to open the sash as much or as little as may be desired, and to lock it in that position.

Having thus described my invention, what I claim as new is—

1. The roller R, arranged at the junction of the lifting-arm A and upright rod U, in a transom-lifter, substantially as and for the purpose described.

2. The guide G′, arranged above the junction of the lifting-arm and upright rod, in combination with the prolonged rod U, the guide G, and arm A, substantially as and for the purpose specified.

JOHN F. WOLLENSAK.

Witnesses:

C. G. HÜLCHE.

JOHN H. SHINKEL.

(Here follow diagrams, marked pp. 190, 191.)

192 UNITED STATES PATENT OFFICE.

FRANK A. REIHER, of Chicago, Illinois.

Transom-Lifter.

Specification forming part of Letters Patent No. 226,353, dated April 6, 1880. Application filed January 29, 1880.

To all whom it may concern:

Be it known that I, Frank A. Reiher, of Chicago, in the county of Cook, State of Illinois, have invented certain new and useful Improvements in Transom-Lifters, which are described in the following specification.

My object is to construct a lifter which will always be ready for use and answer equally well for all kinds of transoms, no matter how the same may be hinged, without exchanging or altering any of the parts, in a simple and durable manner.

In the drawings forming part of this specification, Figures 1 and 2 show a front view and side elevation of my lifter attached to a transom hinged below. Figs. 3 and 4 show the lifter for transoms hinged above. Fig. 5 shows a front view of the lifter attached to a ventilating-opening hanging obliquely. Fig. 6 shows the lifter attached to a transom hinged sidewise. Fig. 7 shows the lifter attached to a skylight. Fig. 8 shows a front view, Fig. 9 a vertical longitudinal section, and Fig. 10 an inverted plan, of the casing. Figs. 11 and 12 show the top of lifting-rod with adjusting-block. Fig. 13 shows the lower part of the lifting-rod with handle attachment.

Like letters of reference indicate like parts.

The casing A, which is screwed to the door-frame, is provided on the front plate with a long slot, *a*. Sliding loosely up and down in this casing A is the adjusting-block B, which protrudes by the ear *b*, forming part of this block, through slot *a*. Affixed to block B is the lifting-rod C, in such a manner as to allow the rod to turn in said block. For this purpose the block is provided with a wide slot, as shown in Figs. 9 and 12, into which fits loosely the pin *d*, which penetrates the rod C.

Attached to the transom in a position which is regulated by and depends upon the manner of hinging the same, at about midway between the outer swinging point and the center of hinge, is the bracket or loop D. Attached to this loop is the connecting link or arm E, which connects at its other end to the ear *b* of the adjusting-block.

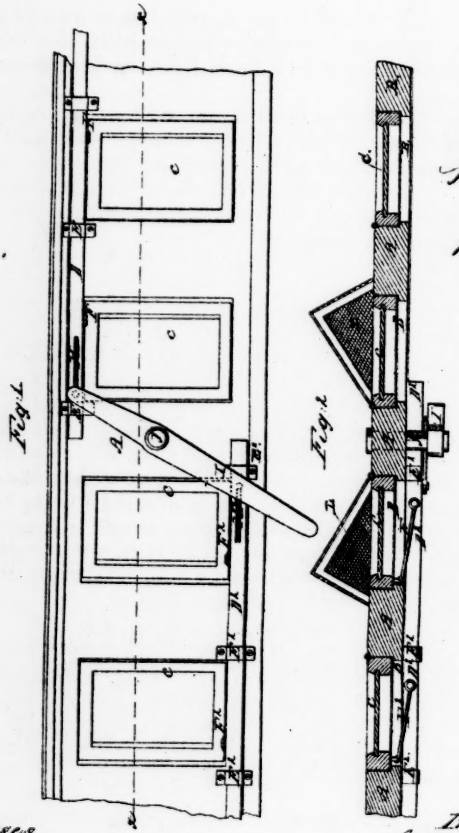
A look at the drawings will show that the upward or downward movement of the adjusting-block, caused by the respective movement of the lifting-rod, will be followed by a swinging movement of the transom on its hinges through the agency of the universal link or arm E.

The inner face of the casing A (shown in Fig. 9) is provided with a series of notches, *e*. The upper end of the rod C is provided with a spiral spring, F, which, resting at one end in the hole *f* of the adjusting-block B, is affixed at its other end in a groove, *f'*, at the top of rod C. This spring F has the tendency to hold the rod C, which

Bayley & Mc Cluskey,

Car Ventilator.

No 79,541. Patented July 7, 1868.



No. 249.
Wollensak
vs.
Reiher
D. 193

Witnesses
Thos Fuschè
Wm Dean Overcliff

Inventors
G. H. R. Bayley
J. Mc Cluskey
Per Munn & Co
Attorneys

193

turns loosely in the block B, in such a position as to cause the pin *d*, which projects on both sides of the block B, to fall into one of the notches *e* provided in the casing. Thus the rod, with block B and universal link E, is held in place by the action of spring F and pin *d*, and can be moved only by turning the rod C slightly in its axis, so as to disengage the pin *d* from the notch *e*.

It will be seen that whenever the hand of the operator should happen to loose its hold upon the rod the spring F will cause the pin *d* to fall into the next notch and arrest the further movement of the block B, and thereby the movement of the transom. The transom may thus be locked at any desired position.

The rod C is provided at its lower end with handle H, arranged with an opening for the finger, so that the rod may be with convenience turned and lifted or lowered at will.

For transoms hinged at the lower edge of the frame (shown in Figs. 1 and 2) the transom with loop D hangs in the universal link E. The casing A with adjusting-block is affixed above. When operating the same the block bears with its shoulders *h* upon the inner face of casing A.

For transoms hinged at the upper frame, as shown in Figs. 3 and 4, the casing is fastened below, so that the adjusting-block may be held by the lowest notch *e*. While the transom is closed the universal link hangs downward from the loop D. In this case, when operated, the bearing between block and casing is reversed, and is taken up by a pin, *g*, penetrating through the ear of the block and resting upon the outer face of the casing A.

For oblique transoms the lifter is affixed as shown in Fig. 5.

192½ Fig. 6 shows a transom hinged at the side. The casing of lifter is affixed vertically at the hinged side, the adjusting-block being in the highest notch when the transom is closed.

For transoms hinged in the middle the lifter may be affixed either above or below the hinged center. For skylights the lifter is affixed as shown in Fig. 7.

It will be seen that the universal link E, with its two swiveling loop ends, will always be ready to form a connection between the transom-loop D and the ear *b* of the adjusting-block, no matter which way the transom may be hinged.

What I claim as my invention, and desire to secure by Letters Patent, is—

1. The casing A, with slot *a*, containing the adjusting-block B, with upright rod C, in combination with chain-link E and loop D, all arranged and constructed in the manner as shown, and for the purpose specified.

2. The adjusting-block B, rod C, pin *d*, and spring F, in combination with casing A, provided with slot *a* and notches *e e*, for the purpose set forth.

FRANK A. REIHER.

Witnesses:
J. C. WELCKE.
ADOLPH C. EWING.

(Here follows diagram, marked p. 193.)

194 UNITED STATES PATENT OFFICE.

G. W. R. BAYLEY and JOHN MCCLUSKEY, of Algiers, Louisiana.

Letters Patent No. 79541, dated July 7, 1868.

Improvement in Railroad-car Ventilators.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that we, G. W. R. Bayley and John McCluskey, of Algiers, Orleans parish, and State of Louisiana, have invented a new and useful Improvement in the "Hanging of Ventilating Windows of Railroad Cars, Steamboats, &c.;" and we do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawings, forming part of this specification.

The present invention relates to an arrangement of mechanism for the more convenient opening or adjusting, at any desired angle, or closing by one motion, of all the raised-roof windows of railroad cars, steamboats, &c.

In the accompanying plate of drawings, our improvement embraced by the present invention is illustrated—

Figure 1 being an elevation of a portion of a series of the upright-roof windows to a railroad car, &c., and

Figure 2 a transverse horizontal section, taken in the plane of the line *x x*, Fig. 1.

A, in the drawings, represents a portion of the upright framework to a railroad car, steamboat, &c., in openings B of which the upright-roof windows C are hinged, being swung open to ventilate the interior of the cars.

In the drawings, these windows C are four in number, and are shown as arranged to open outwards, the two at one end to open in one and the same direction, and the two at the other end both in the opposite direction.

D D^2, two rods, the one arranged to move in guides E, along and above two of the windows, with which they are connected through the link or connecting rods F, suitably hung therefrom, and the other rod, D^2, similarly arranged to move in guides E^2, below the other two windows, to which, by connecting rods F^2, as explained for the rods F, they are connected, and then the two rods, D D^2, by and through connecting pieces H H^2, respectively, to a common operating lever, I, at equal distances from its centre or fulcrum pin J, which lever I is arranged in a vertical position, and projects below the roof windows inside of the cars a sufficient distance for being operated with the hands.

By moving the lever I the windows will be either more or less opened or closed, as the case may be, two in one direction and the other two in the opposite direction, as is obvious without any further explanation.

The sliding bar or bars can be secured to the sides of the raised roof, either above or below the windows, or both above and below them, in suitable caps or guides, which will allow the bar or bars to be moved forward and back in the direction of their length.

These bars are to extend past all the windows on one side, or from the centre to the ends, both ways, or in case of the raised roof of steamboats, in sections of any desired length. And each window is to be connected with the proper sliding rod by means of connecting rods, such as described, the length of the connecting rod being such as to open the window to the extent desired.

As will be seen by the drawings, the arrangement is for opening the windows each way from the centre, in order to admit fresh air from or through the windows in the front half of the raised roof, and to allow for the escape outwards of the foul or heated air through the windows of the rear half of the raised roof.

By this arrangement the windows may be opened alternately forwards and backwards, first one forwards, the next backwards, and so on; or they may be pivoted at the middle, either vertically or horizontally, and all be opened at will either way, alternately, or, by means of a shaft extending from one side to the other of the raised roof, one lever can be made to operate the sliding bars and windows on both sides of the car or boat, &c., at once.

In the drawings, a wire-netting screen, L, is shown as applied to the windows, to prevent sparks, cinders, dust, &c., from entering the car or boat through the windows when open.

We are aware of the patent granted to M. C. Andrews, the application for which was filed August 12, 1867; but as this forms no part of our invention, we do not, therefore, claim it.

What we claim as new, and desire to secure by letters patent, is—

The arrangement of the connecting rods D and D^2 with the connecting rods F F^2, forming a series of operating mechanism for opening and closing the windows, in the manner and for the purposes described.

G. W. R. BAYLEY.
JOHN McCLUSKEY.

Witnesses:
ISAAC SAMUELS.
P. J. HUDER.

195 I further certify that the foregoing was all the evidence read, used, or offered by either of said parties at the hearing of said cause.

THOMAS DRUMMOND.

Endorsed: Filed June 27, 1882. Wm. H. Bradley, clerk.

196 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in said entitled cause,

wherein said John F. Wollensak is the complainant and said Frank A. Reiher is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this twentieth day of July, A. D. 1882.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 249. John F. Wollensak, appellant, *vs.* Frank A. Reiher. Filed 2nd August, 1882.